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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re VIRGINIA G., a Person Coming
Under the Juvenile Court Law.

B275570

(Los Angeles County
Super. Ct. No. DK15070)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ANTONIO G.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County. Victor H. Greenberg, Judge. Affirmed.

Emery El Habiby, appointed by the Court of Appeal, for
Defendant and Appellant.

Marsha F. Levine, appointed by the Court of Appeal, for
minor Virginia G.

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

* * * * *

A juvenile court exerted dependency jurisdiction over then-13-year-old Virginia G. because she had been the victim of physical and emotional abuse. Antonio G. (father) challenges the sufficiency of the evidence to support the juvenile court’s jurisdictional findings as well as the court’s order allowing Leslie G. (mother) to make educational decisions for Virginia in the first instance subject to father’s input. We conclude there is no error, and affirm.

FACTS AND PROCEDURAL BACKGROUND

Father and mother have three children—two are now adults, and Virginia (born 2003) is still a minor. Mother and father separated in 2012, but continued living together with all three children.

In 2014 or 2015, father pushed Virginia’s head into a wall while the family was shopping at Forever 21. Subsequently, father has steadily “bull[ied]” Virginia, calling her “fat,” “worthless” and “stupid”; yelling at her; and telling her she will not succeed in life, that her family hates her, and that she is to blame for the divorce. These incidents have caused Virginia to be afraid of her father; to have “panic attacks,” “muscular twitching,” and “hyperventilation”; and after one incident, to squeeze her head really hard with her hands, hit her head against a car window, and even jump out of a car into traffic—just to get away from the verbal abuse.

The juvenile court asserted jurisdiction over Virginia on two grounds—namely, (1) that father placed Virginia at

substantial risk of serious physical harm inflicted nonaccidentally or as a result of his inability to protect her (from himself), and that mother failed to protect Virginia from that harm (Welf. & Inst. Code, § 300, subds. (a) & (b))¹ and (2) that father caused Virginia to suffer, or placed her at substantial risk of suffering, “serious emotional damage” (§ 300, subd. (c)). The court did so after an evidentiary hearing at which both father and Virginia testified. Father denied all of the incidents and called Virginia a liar. The court found Virginia to be more credible, largely because Virginia’s siblings, her mother and her therapist all corroborated Virginia’s account of father’s conduct.

The juvenile court removed Virginia from father’s custody and placed her with mother. In light of father’s testimony that he disagreed with mother’s plans to keep Virginia in the middle school where she was thriving because he wanted to transfer her to a different school and tutor her himself rather than have her attend special education classes, the court further ordered that “mother can make educational decisions” regarding Virginia in the first instance, but reserved father’s right to discuss mother’s decisions with the social worker and minor’s counsel and to challenge those decisions in court.

Father filed this timely appeal.

DISCUSSION

On appeal, father argues that (1) the juvenile court’s findings that Virginia had suffered, or was at substantial risk of suffering, serious physical and emotional abuse were not supported by substantial evidence, and (2) the court abused its

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

discretion in allowing mother to make educational decisions for Virginia in the first instance.

I. Jurisdictional Findings

Father challenges all of the juvenile court's jurisdictional findings. We review such challenges for substantial evidence, asking only whether the record, when viewed in the light most favorable to the juvenile court's findings, contains evidence that is reasonable, credible and of solid value for a reasonable jurist to make those findings. (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

As a threshold matter, we must decide whether father may assert this challenge at all. Dependency jurisdiction attaches *to a child*, not her parent. (*In re D.M.* (2015) 242 Cal.App.4th 634, 638.) As a result, mother's failure to appeal the jurisdictional findings resting on mother's failure to protect Virginia means that the court's dependency jurisdiction remains intact. (*Id.* at pp. 638-639; *In re M.W.* (2015) 238 Cal.App.4th 1444, 1452-1453.) We nevertheless retain some discretion to reach the merits of a jurisdictional challenge, particularly where, as here, the jurisdictional findings involving mother are based solely on her failure to protect Virginia from father's conduct; in such a case, the success of father's challenges would erase *all* bases for dependency jurisdiction. (Accord, *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763 [recognizing exception where failure to entertain challenge will be prejudicial to the appealing parent].)

A juvenile court may assert dependency jurisdiction over a child if she "is suffering, . . . 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" (§ 300, subd. (c).) To assert jurisdiction on this basis, the child

welfare agency must show “(1) the offending parental conduct; (2) causation; and (3) serious emotional harm or the risk thereof, as evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior.” (*In re Roxanne B.* (2015) 234 Cal.App.4th 916, 921.)

Substantial evidence supports the juvenile court’s jurisdiction on the ground of emotional abuse. The court credited Virginia’s account of her father’s persistent barrage of insults designed to undermine Virginia’s sense of self-confidence and self-worth; found that this conduct caused Virginia to fear her father, and to have panic attacks, to twitch, to hyperventilate, and in one instance, to harm herself by squeezing her head and banging it against a window; and concluded Virginia’s reactions are akin to “severe anxiety, depression, withdrawal, or untoward aggressive behavior” or could ripen into such given the substantial likelihood that father would continue his behavior because he has flatly denied it so far.² (Accord, *In re A.J.* (2011) 197 Cal.App.4th 1095, 1105-1106 (*A.J.*) [mother’s conduct caused child to fear mother; sufficient evidence]; *In re D.P.* (2015) 237 Cal.App.4th 911, 918-919 [same]; *In re Christopher C.* (2010) 182 Cal.App.4th 73, 84-85 (*Christopher C.*) [parents’ constant coaching of children to lie; sufficient evidence]; *In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1320-1321 [mother’s conduct in obsessing over possible medical issues with child’s penis; sufficient evidence of risk of emotional harm]; *In re Shelley J.*

² All of these findings are based chiefly on Virginia’s in-court testimony. Thus, whether or not we give effect to father’s never-ruled-upon objection to the use of hearsay (except as corroborative evidence) under section 355, the juvenile court complied with section 355’s requirements.

(1998) 68 Cal.App.4th 322, 329-330 [parent's conduct caused minor to run away from home, hide from the police, and steal a wallet; sufficient evidence], disapproved on another ground in *Christopher C.*, at pp. 82-83.)

Father levels two challenges. First, he notes that this dependency case is occurring in the midst of his divorce and argues that “[t]he juvenile courts must not become a battleground by which family law war is waged by other means.” (*In re John W.* (1996) 41 Cal.App.4th 961, 975.) However, temporal overlap alone is insufficient to preclude dependency jurisdiction. (E.g., *Christopher C.*, *supra*, 182 Cal.App.4th at pp. 84-85; *A.J.*, *supra*, 197 Cal.App.4th at pp. 1105-1106.) Dependency jurisdiction remains appropriate as long as there is sufficient evidence to invoke it. (*In re John W.*, at p. 975 [so noting].) As discussed above, here there is.

Second, father contends that there is insufficient evidence that Virginia has suffered or is at substantial risk of suffering severe emotional distress, and specifically points us to *In re Brison C.* (2000) 81 Cal.App.4th 1373 (*Brison C.*). Father argues that Virginia is not suffering from severe emotional distress because she has had only two documented anxiety attacks, is not yet suicidal, and has not yet been prescribed medication. We disagree that this is insufficient to constitute severe emotional distress, but need not definitively plumb the issue because jurisdiction is also appropriate because father's conduct places Virginia at substantial risk of such distress—even if she is not there yet. In light of father's refusal to acknowledge his conduct, the danger it will continue—and that Virginia's reactions will worsen—is substantial. Father asserts that Virginia hopes to mend her relationship with him in the future, but her aspirations

do not undermine the sufficiency of the evidence of the current effect of her father's conduct. Father next argues that there is no further risk because he has moved out of the family home, but this overlooks that the only reason he did so is because of this case; absent dependency jurisdiction, his presence in her life and the persistent harassment that accompanies it would likely continue.

Brison C. does not dictate a different result. The court in *Brison C.* held there was insufficient evidence to support a finding of severe emotional abuse or risk thereof because the child was well-adjusted and had no behavioral or serious emotional problems, because his suicidal ideation was contingent upon his living with father, and because both his parents were making "good faith efforts to alleviate the problem." (*Brison C.*, *supra*, 81 Cal.App.4th at pp. 1376-1381.) Some courts have "question[ed] the soundness" of *Brison C.* (*A.J.*, *supra*, 197 Cal.App.4th at p. 1105), but even if we accept its validity, it is distinguishable because Virginia *has* suffered severe emotional abuse and because father's refusal to acknowledge his conduct places Virginia at continued risk of the severe emotional abuse.

Because substantial evidence exists to support dependency jurisdiction on the ground of emotional abuse, we need not consider whether the additional grounds (namely, physical abuse) are also supported by substantial evidence. (*In re Ashley B.* (2011) 202 Cal.App.4th 968, 979 ["[a]s long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate"]; *In re I.A.* (2011) 201 Cal.App.4th 1484, 1492 [same]; *D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1127 [same].)

II. Dispositional Order

Father challenges the aspect of the dispositional order granting mother the right in the first instance to make educational decisions for Virginia, subject to father's input as transmitted through social workers or counsel and, if there is disagreement, through resolution by the juvenile court.

Juvenile courts are authorized to issue "all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of [a dependent] child," and to "direct any reasonable orders to the parents or guardians of [that] child." (§ 362, subds. (a) & (d).) While parents have a "constitutionally protected liberty interest in directing their children's education" (*In re D.C.* (2015) 243 Cal.App.4th 41, 58 (*D.C.*)), where a court has asserted dependency jurisdiction over a minor child under section 300, "the court may limit the control to be exercised over the . . . child by any parent" as is "necessary to protect the child" (§ 361, subd. (a)(1); *D.C.*, at p. 58). We review the court's order limiting a parent's educational rights for an abuse of discretion, "bearing in mind 'the focus of dependency proceedings is on the child, not the parent.'" (*In re R.W.* (2009) 172 Cal.App.4th 1268, 1277.)

The juvenile court did not abuse its discretion in limiting father's educational rights by requiring him to provide his input indirectly through counsel or social workers rather than directly to Virginia, mother or school officials. The court's order did not in any way curtail father's right to obtain judicial review of decisions regarding Virginia's education; instead, it set up a presumption that mother's decisions, as informed by father's input, prevailed until a court orders otherwise. This is a modest limitation on father's power, and one within the court's discretion given father's vehement disagreement about what is best for

Virginia educationally and his demonstrated inability to convey his disagreement in a non-demeaning, non-confrontational manner.

Father argues that the degree of his interference with Virginia's education is less than the degree of interference present in *D.C.*, *supra*, 243 Cal.App.4th 41, where the father harassed school officials. However, *D.C.* did not purport to set the floor for what is required before a juvenile court may intervene. Moreover, the court's order in this case imposed a far less onerous intrusion on father's educational rights than the order in *D.C.*; it requires concomitantly less justification. Father lastly asserts that the court's educational order is not in Virginia's best interests because only *he* knows what is best; the juvenile court found to the contrary, and we have no basis to disturb the court's credibility finding in this regard.

DISPOSITION

The juvenile court's orders are affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
CHAVEZ

_____, J.*
GOODMAN

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