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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re ISABEL R. et al., Persons
Coming Under the Juvenile Court
Law.

B268474
(Los Angeles County
Super. Ct. No. DK11369)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.R.,

Defendant and Appellant.

APPEAL from jurisdictional findings of the Superior Court of
Los Angeles County. Robert S. Draper, Judge. Affirmed.

Elizabeth C. Alexander, under appointment by the Court of Appeal, for
Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County
Counsel, and Dashiell G. Talbot, Deputy County Counsel, for Plaintiff and
Respondent.

In this dependency case involving Isabel R. (Isabel), Valerie C. (Valerie) and Ashley C. (Ashley) (collectively minors), T.R. (mother) appeals from the jurisdictional findings that she failed to protect Isabel within the meaning of Welfare and Institutions Code section 300, subdivisions (b) and (d),¹ and as to Valerie and Ashley under subdivisions (b), (d) and (j). We find no error and affirm.

FACTS

Isabel was born in September 1999. In 2005, mother met Jose, and they married after a year of dating. Isabel's two half-sisters, Valerie and Ashley, were born in June 2008 and July 2011, respectively.

The family came to the attention of the Department of Children and Family Services (Department) on May 16, 2015, prompting it to investigate allegations that Jose had been sexually abusing Isabel.

The ensuing detention report indicated the following: After Jose moved in with mother, he started touching Isabel's vagina and breasts. While touching her, he would unzip his pants, expose his penis and make her touch it while saying sexual things to her in Spanish. One time when she was 10 years old, after Jose took a shower, he removed her clothes and got on top of her. She did not feel any pain and did not know what happened. He said, "[D]on't tell anybody[,] this is a secret." He touched her vagina approximately once a week² when Isabel was between the ages of 8 years old and 11 years old. The incidents took place in his bedroom and the living room while mother was sleeping, in the kitchen, taking a shower or visiting an aunt's house. When Isabel was 13 years old, there was one incident in

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

² At one point, Isabel said it may have been once a month.

which he started touching her over her clothing, and she told him to stop. He did not abuse her again. Isabel never reported the abuse to mother.

Several years later, Isabel told her cousin that she had been sexually abused by Jose. The cousin told an aunt, who in turn informed mother. Mother spoke to Isabel, who confirmed her report. When mother said she wanted to go to the police, Isabel said she was too afraid. Two days later, mother took the minors to the police station to report the sexual abuse.

Regarding interviews with mother, the detention report stated, “Mother stated that since she found out about the abuse, she is beginning to understand [Jose’s] behavior towards her regarding their intimate relationship since they married. According to the mother[,] the level of intimacy between she and [Jose] has been non-existent. [Mother] stated that since they got [married] eight years ago, [Jose] has been avoiding having sex with her. [Mother] also stated that since . . . Ashley’s birth in 2011[, Jose] has had no sexual relations with [mother]. [¶] She stated that she would often find [Jose] masturbating in the bathroom. [Mother] stated that she also dismissed the idea of [Jose] having an extra marital affair [] because he was always home on time[,] and [he] would not go out alone. She stated that she asked her children if they had ever accidentally witnessed the masturbation, and they all said no. She stated that he was never jealous and he had been a good provider to all her children. [Mother] stated that she did not know about the sexual abuse . . . and she never suspected that anything could possibly be going on. [Jose] did not treat Isabel differently either. What [mother] did notice was that Isabel wanted to be around [mother] all the time and would not stay alone with [Jose]; however[,] Isabel never disclosed anything[.]”

Mother requested and received an emergency protective order. The police served it on Jose, and he immediately left the family home.

The Department filed a dependency petition pursuant to section 300, subdivisions (b), (d) and (j) alleging that Jose sexually abused Isabel, and that mother failed to protect the minors when she knew or reasonably should have known of the sexual abuse.

The jurisdiction/disposition report contained updated interviews with Isabel and mother. According to the report, Isabel stated “that before reporting the abuse she wanted to remember exactly what had happened. She and mother reportedly wanted to wait before going to the police so they could think about what had happened and process the information but mother’s friends made them go to the police. [¶] Isabel . . . did not want to involve the police and just wanted to confront [Jose]. She said she wanted him to stay away from her and only see siblings Valerie and Ashley on the weekends. [Isabel] said she does not want to deal with the police and court; she just wants a normal life. She also said she feels bad for her sisters who cannot see their father and worries about the family’s finances.” Mother stated that she never saw anything strange, always trusted Jose with Isabel and never imagined he would abuse her. Mother did not think Jose was capable of abusing Valerie and Ashley, and said she wants them to continue to see Jose. According to mother, “she was even more vigilant with [Jose] and Valerie and Ashley because the children are very attached to him and a friend once warned her about their relationship.”

The Department concluded mother “took the appropriate steps to protect Isabel from further sexual abuse by [Jose] by reporting the abuse to law enforcement. She continues to ensure [Jose] remains out of the family

home, has complied with court orders and continues to cooperate with the Department.”

On July 6, 2015, Isabel completed a forensic interview in which she detailed her sexual abuse. According to Isabel, after learning of the abuse, mother did not know what to do and told Isabel to sleep in mother’s bedroom with her. Mother was worried, and she was afraid Jose was touching Valerie and Ashley. Several days later, mother wanted to confront Jose but did not know how. Isabel told mother, “No. What if he does something bad to you?” Mother called a friend. That friend offered her home to Isabel and told mother, “Change, we’re going to go to the police.” The friend said she would report the abuse if mother did not.

Isabel was asked if anything had changed at home since she reported the abuse. She said “sometimes [mother] gets frustrated” and “[i]t’s been hard,” and she implied that mother did not believe she had been abused. The interviewer asked Isabel to elaborate, and she said, “It’s, like, she does believe me, but it’s, like, she’s the kind of person who doesn’t really show emotion. So it’s kind of like . . . well, she doesn’t really show emotion that much. She doesn’t—you know. It’s kind of weird to give her a hug when I’m leaving somewhere because, like, she does believe me. But it’s like I feel like if she doesn’t.” Sometimes, said Isabel, mother says “it’s” Isabel’s fault. But then Isabel clarified and said, “She doesn’t say it’s my fault. But it’s, like, I don’t know if I’m too sensitive about it and I’m just thinking that maybe she’s trying to say that when she says something.” Mother would say, “You see what we’re going through now,” which would cause Isabel to get mad and say, “You’re telling me like it’s my fault. It’s not my fault.” Mother would not say anything in response. Isabel would go to her room, go to the bathroom, and lock herself in.

Isabel told the interviewer that she feels alone. Although she is able to talk to mother, Isabel “feel[s] like she doesn’t get it.”

At trial, mother was first to testify. She denied telling Isabel, “Look at what we’re going through now” or that she was at fault. When asked if she suspected there was a risk of harm to her children, she said no, and that she was surprised when the abuse came to light.

Isabel testified in chambers. When she told mother about the abuse, she said mother was quiet for a while, and then asked, “Is that true[?]” Though Isabel could not remember mother’s exact words, she recalled mother essentially saying she could not imagine Jose abusing her, or that it was hard to believe that he would do such a thing. Twice, according to Isabel, mother said, “See what we’re going through?”

When Isabel disclosed the abuse to mother, Isabel felt that mother would protect her from Jose. Isabel slept in mother’s bedroom behind a locked door. Meanwhile, Jose slept on a sofa. He was still living in the home because “we were still figuring out what to do. We were not sure the first time going to the police. We were nervous.”

After hearing the testimony of mother and Isabel and considering all of the evidence, the juvenile court declared Isabel a dependent under section 300, subdivisions (b) and (d), and Valerie and Ashley dependents under section 300, subdivisions (b), (d) and (j). The juvenile court stated that Isabel was credible, and believed that she had been molested by Jose. It stated that because of Jose’s abhorrent crimes, he posed a current risk of harm to Valerie and Ashley. With respect to mother, the juvenile court stated: “. . . I think there are arguments both ways as to whether [she] failed to protect. I do find by a preponderance of the evidence . . . that allegation is correct. Mother could have protected Isabel more than she did.” The juvenile court made no

finding that the minors were at current risk of harm from mother's failure to protect them.

The minors were placed in mother's custody.

Mother was ordered to participate in sexual abuse awareness counseling, individual counseling to address "case issues[,] with a masters level or licensed therapist," and family preservation services.

The juvenile court retained jurisdiction for further proceedings under section 302 regarding mother's and Jose's financial responsibility for the minors while they were detained.

This appeal followed.

Subsequently, on July 27, 2016, the juvenile court terminated jurisdiction over the minors subject to further proceedings regarding financial responsibility per section 903. As a result, the minors were released to mother. On August 2, 2016, the juvenile court entered a custody order awarding full legal and physical custody of Valerie and Ashley to mother.³

DISCUSSION

I. This Appeal is not Moot.

"As a general rule, an order terminating juvenile court jurisdiction renders an appeal from a previous order in the dependency proceedings moot. [Citation.] However, dismissal for mootness in such circumstances is not automatic, but 'must be decided on a case-by-case basis.' [Citations.]" (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.) An issue is not moot if it might affect the outcome in a subsequent dependency proceeding. (*In re M.C.* (2011) 199 Cal.App.4th 784, 802.)

³ Because jurisdiction was terminated, the Department moved to dismiss this appeal as moot. As we discuss in Part I of the Discussion, *post*, the appeal is not moot. The Department's motion is hereby denied.

The jurisdictional findings against mother might obligate her to pay the cost to Los Angeles County of the minors' legal services. (§§ 332, 903.1.) Moreover, the jurisdictional findings against mother would give rise to collateral estoppel in any subsequent dependency case, and could be used against her. On these two grounds, we conclude that the appeal is not moot.

II. The Jurisdictional Findings.

Mother challenges the juvenile court's jurisdictional findings against her under section 300, subdivisions (b)(1), (d) and (j).

We review jurisdictional findings under the substantial evidence standard. (*In re P.A.* (2006) 144 Cal.App.4th 1339, 1344.) Under this standard, "all conflicts are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.]" (*Ibid.*) "A decision supported by a mere scintilla of evidence need not be affirmed on appeal." [Citation.] Although substantial evidence may consist of inferences, those inferences must be products of logic and reason and must be based on the evidence. Inferences that are the result of mere speculation or conjecture cannot support a finding. The ultimate test is whether a reasonable trier of fact would make the challenged ruling considering the whole record. [Citations.]" (*In re James R.* (2009) 176 Cal.App.4th 129, 135 (*James R.*)).

A. Isabel.

Dependency jurisdiction is triggered under section 300, subdivision (b)(1) if a "child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child[.]" The last sentence provides: "The child shall continue to be a dependent child pursuant to this subdivision only so long as necessary to

protect the child from risk of suffering serious physical harm or illness.” (§ 300, subd. (b)(1).) To establish section 300, subdivision (b)(1) jurisdiction, case law requires evidence of neglectful conduct by the parent in one of the specified forms, causation, and serious physical harm or illness, or a substantial risk of such harm or illness. (*James R.*, *supra*, 176 Cal.App.4th at p. 135.)

Past serious physical harm is sufficient for purposes of section 300, subdivision (b)(1). The Department does not have to establish a current risk of harm. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1439; *In re Adam D.* (2010) 183 Cal.App.4th 1250, 1261; but see *In re J.N.* (2010) 181 Cal.App.4th 1010, 1022–1023 [holding that current risk of harm is required].)

Jurisdiction can be exercised under section 300 subdivision (d) if a “child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.”

According to mother, there is insufficient evidence that she knew or should have known Jose was abusing Isabel and failed to protect her. But the record establishes that Jose was molesting Isabel from the time she was eight years old until she was 13 years old; a friend once warned mother about Jose’s relationship with Valerie and Ashley; mother knew Isabel did not want to be alone with Jose, yet mother always trusted Jose and did not imagine he would abuse her; Isabel always wanted to be around mother; mother often caught Jose masturbating in the bathroom; Jose had been avoiding intimate relations with mother since they were married; once mother learned of the

abuse, she waited two days before going to the police and thereby exposed the minors to the threat of Jose for those two days; during those two days, mother did not know what to do—she told Isabel to sleep with her but did not take a similar precaution with Valerie and Ashley even though mother worried that Jose might touch them; mother did not take the minors to a friend’s house even though that was an option; subsequently, mother wanted Valerie and Ashley to continue seeing Jose; and after the dependency case was initiated, mother exhibited a lack of sensitivity and insight into the abuse Isabel suffered by failing to make Isabel feel accepted and free of fault. These facts, when considered as a whole, depict a highly dysfunctional family. Mother was out of tune with her eldest daughter, and she ignored warning signs about Jose’s sexuality, his closeness to Valerie and Ashley, and Isabel’s implied fear of Jose based on her avoidance of him. Thus, on this record, there is sufficient evidence mother reasonably should have known of the abuse.

Based on the preceding, we conclude that the findings with respect to section 300, subdivisions (b) and (d) must be affirmed.

B. Valerie and Ashley.

There is no evidence Valerie and Ashley were molested. As a result, with respect to the failure to protect allegations against mother, section 300, subdivisions (b) and (d) could not be triggered as to Valerie and Ashley unless there was a current risk of harm at the time of the adjudication. The same is true of section 300, subdivision (j). It provides for jurisdiction if a “child’s sibling has been abused or neglected, as defined in subdivision[s] (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions.” (*In re Carlos T.* (2009) 174 Cal.App.4th 795, 803.)

At the time of adjudication, the trial court made no express finding that Valerie and Ashley were at current risk of harm due to mother's failure to protect. Impliedly, however, the juvenile court did make that finding. We therefore must examine whether that finding is supported by the evidence.

Despite learning of Jose's abhorrent abuse of Isabel, mother stated that she did not think Jose was capable of abusing Valerie and Ashley, and she said she wants them to continue to see Jose. Mother's discounting of the risk to Valerie and Ashley at the time of the adjudication hearing is highly concerning. In our view, mother has exhibited a dangerous blind spot about the threat Jose poses to Valerie and Ashley given that he is an established sexual predator of children. Moreover, for the two days mother knew about Jose's abuse of Isabel and still allowed Jose to live in the family home, mother took no precautions to protect Valerie and Ashley. Mother's apparent lack of concern establishes a substantial risk of failure to protect.

DISPOSITION

The jurisdictional findings are affirmed.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, 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.