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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re AARON C., et al., Persons Coming
Under the Juvenile Court Law.

B238403

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK89659)

Plaintiff and Respondent,

v.

JOSE C.,

Defendant and Appellant;

AARON C., et al.,

Respondents.

APPEAL from a judgment of the Superior Court of Los Angeles County.

Rudolph Diaz, Judge. Affirmed.

Suzanne Davidson, under appointment by the Court of Appeal, for Defendant and Appellant.

M. Elizabeth Handy, under appointment by the Court of Appeal, for Respondents Aaron C., et al.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Jessica S. Mitchell, Associate County Counsel, for Plaintiff and Respondent Los Angeles County Department of Children and Family Services.

Jose C., father of Aaron, Itzel and Shiloh, appeals from the judgment entered after the juvenile court declared his children dependents, removed them from his physical custody and placed them in the care of their mother. Although father does not contest the jurisdictional finding against him under Welfare and Institutions Code section 300, subdivision (b),¹ relating to domestic violence between him and mother, he contends that the evidence is insufficient to support that finding under subdivision (a) of the statute. He also contends the evidence is insufficient to support the jurisdictional finding against him under section 300, subdivision (b), relating to his use of alcohol. We disagree with father's contentions and thus affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Domestic Violence Between Father and Mother, the Section 300 Petition and Detention*

The family came to the attention of the Department of Children and Family Services after the Los Angeles Police Department reported an altercation between mother and father, who were not married but living together, on September 6, 2011, when Aaron was four years old, Itzel was three years old and Shiloh was one year old. According to DCFS, about 10:30 p.m. that evening, "the mother and father were arguing. The father brandished a knife at the mother. Later, the father was trying to get the mother's purse so he could get the cell phone. In the process, he pushed the stroller, which hit Shiloh in the forehead. Shiloh sustained a bruise the size of a silver dollar on her forehead. . . . [¶] The father denied he caused the bruise on Shiloh's forehead. He said they were at the park during the day and he thinks Shiloh bruised her head at the park." "Mother alleged that father threatened her with a knife and she called the police after they argued over father's missing cell phone. Mother alleged that father knocked over Shiloh in her stroller when father grabbed at [mother's] purse to search for his cell phone. As [a] result of this altercation, Shiloh suffer[ed] a bump o[n] the left side of her forehead. Mother stated . . . father didn't intentionally knock over the stroller." "The children never made any

¹ Statutory references are to the Welfare and Institutions Code.

statements about the allegations. Aaron only said yes when asked about seeing his parents fighting.”

After Shiloh was transported to the hospital, the doctor who examined her reported that “the bump on her head was not serious[,]” with only an “external bump on the left side of her forehead and . . . no apparent internal head injury.” The doctor “stated the injury was consistent with a fall and hit on [a] metal gate as reported by her mother.” Father was arrested, and the children were detained from him and placed with mother. DCFS reported that “[t]his [is the] second time that father has been arrested for domestic violence during [his] six[-year] relationship” [with mother].

In an interview with DCFS, “[m]other stated this is the second time father has been arrested for domestic violence on her. Mother stated back then father knocked her and Aaron down while she held Aaron. Mother stated Aaron’s G-tube was knocked out when father knocked her down so she called the police on father back then too. Mother stated she only reunited with father because her father . . . always asked [her] to get back together with her children’s father. Mother stated she tried to work things out but she later realized her father . . . was only kidding / joking with her about getting back with . . . father[.]. Mother stated she always thought it was in the best interest of her children to always have their father around. [¶] Mother stated her problems and arguments with father never stopped.”

“Mother stated [that on June 6] father started to argue with her because his cell phone was missing. Mother stated father accused her of taking it but she never took it. Mother stated she had gone to the park with her children [that] night because it was still very hot and they returned home around 9:30PM. Mother stated this [is] when father started to argue with her about his missing cell phone. Mother stated father would not let her and [the] children inside the house and [the] children started to cry. Mother stated father slammed the door on her right leg several times and caused the bruises she currently has on her right leg (about five bruise marks on the inside of her right leg). [¶] Mother stated father then knocked over Shiloh’s stroller when he grabbed at [mother’s] purse to check if she had his cell phone in her purse. Mother stated Shiloh

was strapped inside the stroller and it banged up against the metal fence outside their house when father grabbed her purse off of it. Mother stated she didn't know Shiloh hit her head until father let her back in the house. Mother stated father didn't knock over the stroller intentionally and neither of them knew Shiloh had hit her head until later. [¶] Mother stated father would not stop arguing with her but this time he pulled out his pocket knife from his pants and pointed the blade at her throat while she held Shiloh in her arms. Mother stated father told her he wasn't going to let her frame him this time. Mother stated the knife blade was just beneath her chin pointed at her throat. Mother stated she was very afraid and called the police on her cell phone. [¶] Mother stated father would not let her get out of the house." When Itzel awoke and started to cry, father went to check on her, "so [mother] slipped past [father] and waited outside for the police to arrive. [¶] . . . [¶] Mother stated she is not going back to father and plans to go stay with her aunt . . . until she gets a place to stay of her own. Mother stated she will be seeking [a] restraining order against father this time. Mother stated there is no hope for her [and] father remaining together after this incident. Mother stated she [would] cooperate with DCFS and participate in counseling to help deal with this domestic violence and protect her children from any future incidents."

Father reported in an interview with DCFS that "he never brandished any knife at mother and he never threatened her. Father stated there was no violence or domestic violence between mother and him, but mother still called the police on him. Father stated the whole situation last night started when he came home and mother started to argue with him about there being no detergent in the house to wash the clothes. Father stated he plug[ged in] his cell phone to charge and jumped in the shower instead of arguing with mother. Father stated mother told him she would be going out to the park with the kids at this time. Father stated when he came out of the shower mother and the kids were not home but his cell phone was also missing. Father stated he suspected mother must [have] taken his cell phone because she was angry at him. [¶] Father stated his cell phone is very important to him because it is the only way his work can reach him when he has to go to work. Father stated he went out to look for mother and the children, so he attached one

of his pocket knives to his waist before going out. Father stated his neighborhood is not safe and there [are] always many shootings. Father stated he likes collecting knives since he was a kid and keeps several of them. Father stated he could not find mother and the children so he return[ed] [home]. [¶] Father stated when mother returned home about 9:30PM, he told her to give his phone back but she denied having it. Father stated he told her that he was not going to let her back into the home until she gave him back his phone. Father stated mother accused him of threatening her but he never did and there was never any violence between [them]. Father stated he told mother not to argue and yell at him in front of the children because she was making the children cry. Father stated mother accused him of threatening her with his pocket knife but he never point[ed] [it] at her and he never took it off his waist where he had hooked [it] to his pants. [¶] . . . Father stated he doesn't know where or how Shiloh hit her head because all the children were with mother all day at [the] park while he was at work."

"Father stated he had been arrested before several years ago (around 2008) and convicted of domestic violence only because he plead[ed] guilty on advice by his attorney. Father stated he never hit mother back then and he still had to plead guilty to domestic violence. Father stated he was [on] probation after he was released from jail and he completed a year of counseling back then. Father stated he was separated from mother for a long time after that until they moved in together to their current home around back in August 2010. [¶] Father stated he is done with mother now after this incident and he will be leaving this morning. Father stated nothing happened between him and mother but mother is blowing everything out of [pro]portion. Father stated their relationship is very bad and they will not be able to work it out, but he will not stop being a father to his children."

On September 12, DCFS filed a petition under section 300, subdivisions (a) and (b), alleging that mother and father "have a history of engaging in violent altercations in the presence of the children. On 09/06/2011, the father placed a knife to the mother's throat while the mother held the child, Shiloh[,] and threatened to kill the mother. The father repeatedly slammed a door on the mother's leg inflicting bruising to the mother's

leg. The father pushed over the child Shiloh's stroller causing the child to sustain a bump to the child's forehead during the violent altercation between the parents. On a prior occasion, the father pushed the mother while the mother was holding the child Aaron causing the mother to fall with the child. The mother failed to protect the children. The mother allowed the father to reside in the children's home and have unlimited access to the children. Such violent conduct on the part of the father against the mother and the mother's failure to protect the children endangers the children's physical health and safety and places the children at risk of physical harm, damage, danger and failure to protect."

At the detention hearing, also on September 12, the juvenile court found a prima facie case for detaining the children, released them to mother and ordered DCFS to provide family reunification services to father and family maintenance services to mother. The court also issued a temporary restraining order against father as to mother and the children, but allowed father monitored visits with the children two times per week.

2. *The Amended Petition and the Juvenile Court's Jurisdiction and Disposition*

On October 18, DCFS filed an amended petition in which it repeated the domestic violence allegations under section 300, subdivisions (a) and (b), and added the allegation against father under section 300, subdivision (b), that father "has a history of substance abuse and is a current user of alcohol, which renders father unable to provide care and supervision for the children. Further, on 09/05/2011 father was involved in an automobile accident where he struck another vehicle while driving under the influence of alcohol. Said conduct and alcohol abuse on behalf of father endangers the children['s] . . . physical and emotional health and safety and places the children at risk of emotional and physical harm and damage."

In the jurisdiction and disposition report, DCFS indicated that charges against father regarding the domestic violence incident on September 6 had been dismissed. Nevertheless, DCFS reported that mother "has remained consistent with her statements that . . . Shiloh sustained an injury on her head during an altercation with father on

09/06/2011. Mother reports that she also sustained an injury to her leg when father repeatedly closed the door on her leg when trying to prevent her from entering the yard of their home. Once inside, mother reports that father pointed a pocket knife at her throat in a threatening manner. She denies that father threatened her life.” “Father admits that he and mother . . . argued on 09/06/2011 in the presence of the children. However, father denies causing an injury to mother’s leg, threatening mother or causing . . . Shiloh to sustain an injury to her head. Father believes the child was injured prior to mother and the children arriving back home from their outing.” Regarding the prior incident of domestic violence between mother and father, Aaron “was born with a condition wherein his intestine was on the outside of his stomach when he was born. The child spent 6 months in the hospital after his birth and had a G-tube in place for feeding until he was approximately 2 years old.” Although mother now stated that she did not fall with Aaron in her arms, she “reported at the time of the incident that when father attempted to become physical with her, . . . Aaron’s G-Tube had become dislodged because she was holding the child who was an infant at the time. Father admits that he grabbed mother, but denies that she had been holding . . . Aaron when the incident occurred.”

As to the allegation of alcohol abuse, mother reported that, although father “drives a truck out of state and he doesn’t drink when he’s working, . . . he drinks a lot when he gets back home.” Father’s “drinking makes him more aggressive.” Father admitted “that he had been involved in an automobile accident on the morning/day prior to the violent altercation between [him] and mother. Mother described father as drunk when he left the family home for a second party. Father admitted that he had drunk 4 beers, but denies being drunk. He also admitted to having 1 beer at a second party and then driving himself home, subsequently becoming involved in an accident where he struck a parked car. Father contends that his texting while driving was the cause of the accident, and not the 5 beers that he had consumed earlier in the evening.”

At a hearing on October 18, the juvenile court dismissed the original petition, continued its orders based on the allegations in the amended petition and reentered the

temporary restraining order against father through November 4. The court set the adjudication hearing for November 4.

At the adjudication hearing, the juvenile court sustained the allegations in the amended petition under section 300, subdivisions (a) and (b), and continued the matter to December 20 for disposition. At the disposition hearing, the court declared the children dependents under section 300, subdivisions (a) and (b), and found clear and convincing evidence to remove them from father's physical custody, continuing placement of the children with mother. The court continued family maintenance services for mother and family reunification services for father, including participation in an alcohol program with random testing. It also ordered monitored visitation for father, with a DCFS monitor, and gave DCFS discretion to liberalize the visits.

Father filed a timely notice of appeal. (§ 395, subd. (a)(1); see *In re Tracy Z.* (1987) 195 Cal.App.3d 107, 112 [jurisdictional findings reviewable on appeal from the judgment following disposition].)

DISCUSSION

Father contends that the evidence is insufficient to support the jurisdictional findings against him under section 300, subdivision (a), regarding the domestic violence between him and mother and under section 300, subdivision (b), regarding his alcohol use. We disagree.

“The purpose of section 300 is ‘to identify those children over whom the juvenile court may exercise its jurisdiction and adjudge dependents.’ [Citation.]” (*In re A.O.* (2010) 185 Cal.App.4th 103, 110.) To declare a child a dependent under section 300, the juvenile court must find by a preponderance of the evidence that the allegations are true. (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318; see § 355, subd. (a).) We review the court's findings under section 300 for substantial evidence and will affirm the judgment based on those findings if they are supported by reasonable, credible evidence of solid value. (*Matthew S.*, at p. 1319.)

Section 300, subdivision (a), allows a dependency when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted

nonaccidentally upon the child by the child's parent or guardian." "Although many cases based on exposure to domestic violence are filed under section 300, subdivision (b) [citations], section 300, subdivision (a)[,] may also apply." (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 599.) In reviewing an allegation of domestic violence, "application of section 300, subdivision (a)[,] is appropriate when, through exposure to a parent's domestic violence, a child suffers, or is at substantial risk of suffering, serious physical harm inflicted nonaccidentally by the parent." (*Id.* at pp. 598-599.) "Domestic violence is nonaccidental." (*Id.* at p. 600.)

Application of section 300, subdivision (a), based on domestic violence was appropriate. Before the instant dependency, father pleaded guilty to infliction of corporal injury on a spouse based on an incident in which during an altercation with mother Aaron's G-tube became dislodged, as father confronted mother while she was holding Aaron. The referral that led to the instant dependency was made by the police who were summoned to the family home after father closed the door on mother's leg, resulting in bruising to her leg, and knocked over Shiloh's stroller, causing a bump to her head, while reaching for mother's purse during an argument in which he also pointed a knife at mother's throat. Mother stated that father became aggressive when he drank, which he did when he was home and not working. The incidents of domestic violence in this case, each one resulting in physical injury to one of the children as a result of nonaccidental conduct by father toward mother, indicate that the children were at substantial risk of serious physical harm inflicted nonaccidentally on the children by the parent.

As to section 300, subdivision (b), the juvenile court may adjudge a child a dependent of the court when "[t]he 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 . . . to adequately supervise or protect the child" "A jurisdictional finding under section 300, subdivision (b)[,] requires: "(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." [Citation.]' [Citations.]" (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) When the

jurisdictional finding is “based on the parent’s ‘inability . . . to adequately supervise or protect the child[,]’” DCFS must show “parental unfitness or neglectful conduct.” (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1253-1254.)

Substantial evidence supports the sustained finding under section 300, subdivision (b), based on father’s alcohol use. According to mother, father drank a lot when he was not working, which caused him to become aggressive. This evidence combined with the domestic violence in the presence of the children, which resulted in injury to two of the children, demonstrates parental unfitness or neglectful conduct putting the children at substantial risk of serious physical harm or illness.²

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

JOHNSON, J.

² Because substantial evidence supports the sustained allegation under section 300, subdivision (b), relating to father’s alcohol use, the disposition order requiring father to participate in an alcohol program, with random testing, is designed to eliminate one of the conditions that led to the dependency. (§ 362, subd. (c) [“[t]he program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300”]; *In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777 [case plan “must be designed to eliminate those conditions which led to the juvenile court’s jurisdictional finding”].)