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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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

B286919

(Los Angeles County
Super. Ct. No. DK21047)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.S.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Robin R. Kesler, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and David Michael Miller, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

S.S. (father) appeals from a juvenile dependency court order finding jurisdiction over his two children, R.T. and D.S., under Welfare and Institutions Code, section 300.¹ He also appeals from the disposition order removing the children from his custody under section 361, subdivision (c). We find that substantial evidence supports the court's orders, and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Domestic violence incident

R.T. and D.S. came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) on December 13, 2016, following a domestic violence incident between father and the children's mother, R.S. (mother). Mother and father, married in 2001, had a tumultuous relationship. In December 2016, without mother's knowledge, father filed for divorce and sought custody of the children. After mother received the divorce paperwork at a separate mailing address, she went to the apartment she shared with father and the children, but did not immediately go inside. She fell asleep in her car, and when she woke up around 2:00 a.m., she knocked or pounded on the door of the apartment while holding the divorce documents. According to mother and R.T., father opened the door and immediately punched mother in the face, seriously injuring her right eye. According to father, while mother was pounding on the

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

door her eye was injured by a Christmas wreath hanging on the door. Mother was transported to the hospital, and later reported that she had to have surgery on her injured eye and the vision in that eye was affected.

When DCFS interviewed mother on December 22, the social worker asked how DCFS could help. Mother said she and the children did not want father in their lives. Mother said the marriage had been characterized by turmoil and violence, but the recent incident was the worst. Mother said that before the incident she and the children had moved out of the home they shared with father, but they had recently moved back into his apartment because they did not have anywhere else to go.

Mother said that since the punching incident, she had taken the children out of school and was homeschooling them. Mother was afraid that father would take R.T., then 14 years old, to India and have her married, which father had threatened to do in the past.

The social worker interviewed D.S., age 11, who said he had been sleeping when the punching incident occurred. But D.S. said he does not like father “because he is mean and wanted to hurt his mother or even ‘kill her.’” D.S. also said that father had threatened to chop up mother and put her in the trash. D.S. characterized father as “dangerous and cruel.” D.S. said father had pulled on his ears and hair, forced him to cut his own hair, hit him very hard on the shoulder, and hit him with a belt. D.S. also said that father had hit R.T. and threatened to send her to India. He said he had witnessed violence between mother and father four or five times.

R.T. told the social worker that father was “mean” and “wicked.” She said father threatens to hit her if she questions

him. R.T. also said that at times father had refused to feed them and did not provide toilet paper for use in the home. She said she is afraid to be around father. R.T. witnessed the incident in which father punched mother; she said she woke up to mother's knocking, and when she went to the front door to see if it was mother, father pushed R.T. aside and punched mother in the face. R.T. said father seemed angry that mother was holding the divorce papers with which she had been served. R.T. said she had also heard father threaten to chop up mother and put her in the trash.

B. Petition and detention

On January 11, 2017, DCFS filed a juvenile dependency petition under section 300. Counts a-1 and b-1 alleged that on December 13, 2016, mother and father "engaged in violent altercations in the presence of the children." Counts a-2 and b-2 alleged that father abused D.S. by striking him with a belt, hitting his shoulder, and pulling his ears and hair, and that mother failed to protect D.S. from this abuse. Count j-1 alleged that the physical abuse of D.S. also placed R.T. at risk of harm.

A last-minute information filed on January 11, 2017 stated that when the social worker called father to remind him of an upcoming court date, father yelled at her and pretended he did not know what she was talking about. Father also said that he was not going to appear in court because he had already sought custody of the children in divorce court.

At the detention hearing on January 11, 2017, the court found that DCFS established a prima facie case for detaining the children from father. The children were released to mother's care, and the court ordered family reunification services for father.

C. Jurisdiction and disposition

In a disposition report dated March 9, 2017, mother said father had hit her in the past. Mother also said that both she and father had been arrested for domestic violence against each other. Mother said that she had no plans to get back together with father. R.T. and D.S. were in counseling at the domestic violence shelter where they were staying with mother. DCFS was unable to contact father by phone.

The disposition report included a copy of the Pomona Police Department report relating to the punching incident. The parties reported the events discussed above. The reporting officer stated that he attempted to interview D.S. about the incident, but “he was too upset and scared to speak to me. He was still in shock due to seeing his mother’s injuries.” Father left before police arrived, but he was arrested the following day.

A Pomona Police Department report from November 20, 2015 is also included in the record. It stated that mother reported father for grabbing her by the arms and leaving cuts from his fingernails in her skin. The report noted that mother and father “have no prior domestic violence history through the Pomona Police Department (PPD). A records check of [father] showed that he had prior domestic violence arrests out of the City of Ontario.” It also stated that mother had been arrested for violence against father.

A last-minute information filed before the March 9, 2017 hearing stated that father refused to discuss the case with a social worker. R.T. said she had seen father hit D.S. only once, on the back of the head when D.S. was resisting getting a haircut. Both R.T. and D.S. reported that they did not want any contact with father.

On March 9, 2017, mother filed a request for a restraining order with the juvenile court. At the adjudication hearing the same day, counsel for the children requested that any visits with father be monitored, and that the court order father to stop attempting to contact the children outside of visits. The court found reasonable grounds to issue a temporary restraining order protecting mother and the children; it ordered father to stay more than 100 yards away from mother and the children and not contact them outside of the monitored visits with the children. The court set a hearing on the restraining order and continued adjudication to May 2, 2017.

In a last-minute information filed on May 2, DCFS reported that father denied that he ever hit mother or the children. Father stated that he had not enrolled in any programs, because he had not done anything wrong. Father had not had any visits with the children. A deputy district attorney contacted the social worker and informed her that father is not to have any contact with the children. Documents included with the report showed that father had been charged under Penal Code sections 273.5, subdivision (a) (willful infliction of corporal injury on a spouse) and 273a, subdivision (b) (willful injury to a child not likely to produce great bodily harm). At the adjudication hearing on May 2, 2017, the juvenile court continued the hearing pursuant to father's request, and renewed the temporary restraining order.

A last-minute information filed June 9, 2017 stated that the children were happy in a new residence to which they recently moved with mother, but mother struggled to afford housing for the family. The children had not had contact with father. Father's criminal jury trial was set to begin on June 28, 2017.

At the next hearing on June 19, 2017, the juvenile court noted that mother's counsel produced a copy of a three-year criminal protective order issued January 6, 2017, that covered mother and both children. The court stated, "Therefore, it appears to this court that there's no need for a civil restraining order." The juvenile court noted that mother and father had a divorce proceeding pending in Pomona, and noted that all proceedings relating to custody in that case were required to be stayed due to the pending juvenile dependency case. The court also stated, "[C]onsistent with the criminal protective order, the court orders no visitation for the father. If the criminal protective order is modified or lifted, then counsel can immediately come to this court and we could revive a visitation schedule."

After several continuances, the jurisdiction hearing was held on September 18. Father was not present at the hearing because his mother had passed away, and he had traveled to India to attend her funeral. A last-minute information filed the same day noted that father's criminal trial was set for November 16, 2017.

Father's counsel called R.T. to testify. R.T. said that at the time of the punching incident, she, D.S., both parents, and additional family members lived at the apartment where the incident occurred. In the early morning hours, she heard a knock at the door and got up to open the door, but by the time she got there father already was opening the door. Mother "was asking him what is this, and she was crying. And he was really mad. And then that's when he . . . punched her in the eye and then

picked her up.”² Father had hit mother in the eye with his closed fist. Father took mother to the bathroom to try to rinse off her face, and he asked her not to call the police. R.T. told mother that she needed to call the police and go to the hospital. While father was holding mother and trying to rinse her face, R.T. jumped on him because “[h]e’s still trying to run after her.” Blood had gotten on father’s clothing; father changed his clothing and then left the apartment.

R.T. said that before the punching incident, she had seen father hit mother four or five times. She said, “[S]ometimes he’ll, like, punch her in the arm, or one time he stabbed her in the hand” with a knife. R.T. said that if she attempted to help mother, father would threaten to send her to India to “marry me off.” R.T. said she had never seen mother hit father.

R.T. said she was aware that father had either requested or been awarded custody of her and D.S., and said that upset her because she wanted to live with mother. R.T. said she preferred living with mother because “she doesn’t yell at us, she’s not mean to us, and she doesn’t hit us.” R.T. said that father is “sometimes mean to us, and he really doesn’t treat us right,” because he “yells at us and stuff” and “he’ll try to hit us.” R.T. said father had not hit her, but he had hit D.S. R.T. saw father hit D.S. in the back of the head, which made D.S. cry.

Mother testified that on December 12, 2016, she discovered that father had received a default judgment in the divorce case he had filed, and he had been awarded custody of the children.

² Mother’s question, “What is this?” may have referred to the divorce documents, which mother said she was holding when she knocked on the door. However, R.T.’s testimony does not clarify the context for mother’s question.

Mother said she felt hurt. Later when she knocked on the door of the apartment, father opened the door and “I stepped in and he hit me.” Father hit her right eye. Mother said she began to fall backward, and father grabbed her before she could fall.

The parties rested. The court admitted into evidence a copy of the criminal court restraining order. In closing arguments, counsel for the children asked that counts a-1 and b-1 relating to the domestic violence be sustained, but argued that DCFS had not met its burden as to counts a-2 and b-2 as to father’s abuse of D.S. Mother’s counsel asked that the failure to protect counts be stricken, and that the other counts be sustained. Father’s counsel asked that all counts be dismissed, arguing that the allegations amounted to a scheme by mother to get father in trouble, and that R.T. lied because “[t]he children have been trained by their mother to hate their father.” DCFS asked the court to sustain all counts.

The court amended counts a-1 and b-1 to state that R.T. “jumped on father’s back to stop the domestic violence” during the punching incident. The court sustained counts a-1 and b-1 because “[c]hildren are at risk when they have to get involved in domestic violence between the parents.” The court struck count a-2, but sustained count b-2 based on the “physical discipline [by] the father of striking, hitting with belts, slapping on the head such that they’ve caused unreasonable pain.” The court also sustained count j-1. The court declared the children dependents of the court under section 300.

At disposition, counsel for the children asked for counseling, and said that pursuant to the criminal protective order father was not to have visits. Father’s counsel objected to any order requiring father to undergo a psychiatric evaluation.

The court found that removal from father's custody was required under section 361, subdivision (c). The court ordered the children to the home of mother, and ordered individual counseling. The juvenile court said that if the criminal court lifted the protective order, monitored visitation would be ordered for father. The court also ordered father to complete a 52-week domestic violence program, anger management education, parenting education, a psychiatric evaluation, and individual counseling.

Father timely appealed.

DISCUSSION

Father appeals on two grounds. First, he argues that dependency jurisdiction was unwarranted because the criminal protective order adequately protected the children. Second, he asserts that even if the court had jurisdiction, removing the children from his custody under section 361 was not required because the children were not living with him at the time the petition was filed.

A finding that children are persons described in section 300 must be supported by a preponderance of the evidence, whereas dispositional findings supporting the removal of children from the custody of a parent must be supported by clear and convincing evidence. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248; §§ 355, 361, subds. (c), (d).) “In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “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 I.J.* (2013) 56 Cal.4th 766, 773.)

A. Jurisdiction

Father asserts that a finding of jurisdiction was not warranted because at the time of the hearing, a three-year criminal protective order barred father from having any contact with the children. He contends that there was no indication at the time of the hearing that he would have future contact with the children. DCFS asserts that the court’s jurisdictional finding was supported by father’s history of violence toward the children and mother.

Father correctly notes that “[t]he basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm.” (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134.) Previous acts of violence or neglect, “standing alone, do not establish a substantial risk of harm; there must be some reason beyond mere speculation to believe they will reoccur.” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 565.)

Father contends that because the criminal protective order was in place, “and because there was no substantial evidence the criminal protective order had not been effective for the eight months preceding the jurisdiction hearing, any future harm was speculative.” However, there was evidence that father’s acts of violence could reoccur, based on the history of father’s relationship with mother and the children. Mother and both children reported that mother and father’s relationship had been characterized by disagreements and fighting. R.T. testified that she had seen father hit mother four or five times and she had witnessed father stab mother’s hand with a knife. Both children

reported hearing father tell mother that he would chop her up and throw her body in the trash. R.T. testified and D.S. reported that father had hit D.S., and he threatened to hit R.T. or send her to India to be married if she interfered with or questioned father. Thus the violent incident that led to DCFS's involvement was not an act of violence "standing alone"; there was evidence that the incident was part of a longer history of violent and abusive conduct by father.

Moreover, the evidence suggested that circumstances conducive to father's violence could reoccur. The punching incident was preceded by father's attempt to gain custody of the two children without mother's knowledge, thus indicating that father might be interested in seeking custody of his children in the future. Mother said she and the children had attempted to leave father in the past, but they ended up living with father again when they did not have any place else to live. Mother reported to DCFS that she was struggling to find affordable housing. In addition, father's criminal case had not yet been completed, and there was no information before the court as to how a resolution of that case might affect the protective order, if at all. The dependency court made clear that visitation would be ordered if the criminal protective order were lifted, thus allowing father to have contact with the children again, and father's history of violence shows that oversight of such contact was warranted.

Father did not cite any authority, and we have found none, suggesting that the existence of a criminal protective order prevents a dependency court from exercising jurisdiction under section 300 where jurisdiction would otherwise be warranted. This case differs from the cases father cites in support of his

argument in which there was no evidence of an ongoing risk. For example, father notes that the Court of Appeal in *In re Daisy H.* (2011) 192 Cal.App.4th 713 held that past instances of domestic abuse were insufficient to warrant a finding of jurisdiction. However, in that case “[t]here was no evidence that Father ever intentionally harmed any of his children or that the children were at risk of intentional harm.” (*Id.* at p. 716.) The domestic violence between the parents was remote in time, having occurred either two or seven years before DCFS filed the petition. Moreover, in stark contrast to this case, “the children denied ever witnessing Father physically abuse their Mother and there was no evidence that the [violent] incidents occurred in the children’s presence. The children stated that they had no fear of Father.” (*Id.* at p. 717.) Here, the evidence shows that R.T. witnessed father punch mother in the face shortly before DCFS filed the petition, R.T. attempted to intervene, D.S. was so upset he could not speak with police, father had hit D.S. in the past, and father had threatened R.T. This is not a case where remote instances of domestic violence did not affect the children.

Father also cites *In re Jesus M.* (2015) 235 Cal.App.4th 104, in which this Division held that substantial evidence did not support jurisdiction. There, DCFS alleged and the juvenile court sustained a count under section 300, subdivision (b), but the evidence did not support a finding that the children’s physical harm was at risk because the parents “had long been separated, the two incidents Mother could recall had occurred more than three years earlier, and there was no evidence of current violent behavior.” (*Id.* at p. 113.) Although the father continued to harass the mother in violation of a restraining order, that evidence “did not demonstrate a risk of physical harm to the

children justifying the assertion of jurisdiction under subdivision (b) of section 300.” (*Ibid.*) Here, by contrast, the domestic violence was not remote, R.T. was placed at risk when she attempted to intervene, and father had a history of hitting D.S. *Jesus M.* therefore does not support father’s position.

Moreover, the existence of a criminal protective order does not serve the purposes inherent in the dependency court system. “Dependency proceedings are special proceedings governed by their own rules and statutes.” (*In re Joshua G.* (2005) 129 Cal.App.4th 189, 198.) The purpose of dependency law is “to ensure the safety, protection, and physical and emotional well-being of children who are at risk of . . . harm. This safety, protection, and physical and emotional well-being may include provision of a full array of social and health services to help the child and family and to prevent reabuse of children.” (§ 300.2.) A criminal restraining order, standing alone, neither accomplishes these purposes nor allows a court to order services to assist children and their families. Thus, the existence of a criminal protective order does not obviate the need for dependency court jurisdiction where it would otherwise be warranted.

B. Disposition

Father also asserts that even if jurisdiction over the children was proper, “there was no substantial evidence supporting that portion of the dispositional order completely removing the minors from father’s custody” under section 361, subdivision (c) (section 361(c)). He argues that section 361(c) states that it applies to “parents . . . with whom the child resides at the time the petition was initiated.” (§ 361(c).) Father asserts that because the petition was filed on January 11, 2017, nearly a month after the punching incident and after mother and the

children moved out of father's apartment, section 361(c) did not provide a basis for the court's order removing children from father's custody.

DCFS asserts that father has forfeited this argument by failing to object below. Father responds that this is "not a question of the admissibility of evidence," and therefore, "no evidentiary objection is required to preserve it for review." Father is incorrect. "[T]he forfeiture doctrine applies in dependency cases and the failure to object to a disposition order on a specific ground generally forfeits a parent's right to pursue that issue on appeal." (*In re Anthony Q.* (2016) 5 Cal.App.5th 336, 345 (*Anthony Q.*)). Although we have discretion to excuse forfeiture, this discretion "should be exercised rarely and only in cases presenting an important legal issue." (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) Father has neither acknowledged his forfeiture nor asked us to excuse it.

Even if father's argument had not been forfeited, it lacks merit. The punching incident occurred on December 13, 2016, and the petition was filed on January 11, 2017. "A parent who temporarily moves out of the family home at the direction of a social worker while the Department investigates allegations of domestic violence, for example, should properly be considered to reside with his or her children in that home if a dependency petition is filed a short time later." (*Anthony Q.*, *supra*, 5 Cal.App.5th at p. 352.) Here, it was not father who temporarily moved out of the family home, but mother and the children who moved to a domestic violence shelter while DCFS investigated the claims. This is not a case such as *Anthony Q.*, in which the father lived separately from his children for months before the juvenile dependency petition was filed. (*Ibid.*)

Father also asserts that the court lacked the “clear and convincing evidence” required for removal under section 361(c)(1). That section states, “A dependent child shall not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence [that there] is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s or guardian’s physical custody.”

“We review a removal order for substantial evidence notwithstanding the clear and convincing standard used by the juvenile court.” (*In re Alexzander C.* (2017) 18 Cal.App.5th 438, 451.) For the reasons discussed above, substantial evidence supported the court’s findings that the children’s well-being and safety were at risk in the custody of father. Father asserts that there was “no substantial evidence there were no reasonable means to protect the minors other than removal.” He does not explain how the children could have legally remained in his home with the criminal restraining order in place, which barred father from all contact with the children. Substantial evidence therefore supported the court’s order removing the children from father’s home under section 361(c).

DISPOSITION

The jurisdiction and disposition orders are affirmed.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.