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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re M.T., a Person Coming Under
the Juvenile Court Law.

B279722

(Los Angeles County
Super. Ct. No. DK19782)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

K.A.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Lisa R. Jaskol, Judge. Affirmed in part; reversed in part.

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

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant
County Counsel and Jeanette Cauble, Principal Deputy County
Counsel, for Plaintiff and Respondent.

K.A. (Mother) challenges the sufficiency of the evidence to support the juvenile court's jurisdictional findings under Welfare and Institutions Code¹ section 300, subdivisions (a), (b)(1) and (d), pertaining to her 10-year-old mildly autistic daughter, M.T. She contends the court erred in sustaining allegations that she failed to protect M.T. from sexual abuse by "a thirteen year old unrelated child," as defined by subdivisions (b)(1) and (d), and that she placed M.T. at risk of serious physical harm, as defined by section 300, subdivisions (a) and (b)(1), when she twice assaulted M.T.'s maternal grandmother (MGM) in M.T.'s presence. She does not, however, challenge the juvenile court's true finding under subdivision (b)(1) that, on more than one occasion, Mother left M.T. alone and unattended without adult supervision for as many as six hours, placing her at risk of serious physical harm. Accordingly, as we shall explain, because jurisdiction may be sustained on the basis of a single true allegation, we shall affirm the court's exercise of jurisdiction over M.T. in light of this unchallenged finding.

Mother also contends the court's dispositional order removing M.T. from her care and releasing her to her father, R.T. (Father), but to reside with MGM, is not supported by substantial evidence. We agree. Even if the allegations in the petition are true, and bearing in mind that the standard of review in the juvenile court was clear and convincing evidence, the underlying evidence, viewed as a whole and in the light most favorable to that order, does not amount to substantial evidence that Mother would be unable to protect M.T. from a substantial risk of harm, necessitating removal.

¹ Unless otherwise indicated, further statutory references are to this Code.

FACTUAL AND PROCEDURAL HISTORY

M.T. lived with Mother and Father until their separation in 2011, when she and Mother moved into MGM's home. In August 2015, Mother accepted a job in San Bernardino County and moved in with her boyfriend, Anthony D. (Anthony), and his family in Loma Linda to be closer to work. She arranged for M.T. to remain with MGM until M.T. completed the school year.

In July 2016, following a visit with M.T., Father reported to the San Bernardino County Sheriff's Department that M.T., then 10 years old, said that she had been "raped" eight months earlier by J.W., Anthony's 13-year-old nephew. (J.W.'s actual age at the time was apparently 10 or 11 years old and the incident had apparently occurred a few years earlier.) M.T. told Father that J.W. kissed her and tried to force his hand down her pants. When interviewed by the deputy sheriff, however, M.T. denied that J.W. tried to rape her. Rather, M.T. said that they were "just being curious," and when Mother "found out," she separated them, explaining that they were too young "to be experimenting."

One day earlier, MGM had filed a report with the Glendale Police Department regarding a recent incident with Mother. According to MGM, when Mother came to her home to pick up M.T. for a dental appointment, she refused to release M.T. because Father had told her that he had applied for a restraining order to keep Mother away from M.T.² When MGM tried to call Father, Mother forcibly took the phone away from MGM and destroyed it, and also struck MGM. Mother then pulled M.T.'s hair in the process of dragging her into the car.

² According to the police officer, Father had applied for a restraining order, but none had issued.

These two incidents became the focus of a referral received by Department of Children and Family Services (DCFS) on August 16, 2016, alleging general neglect, emotional abuse, and failure to prevent sexual abuse of M.T. DCFS's investigation of the reports disclosed the following.

According to M.T.,³ while visiting Mother about a year earlier, J.W. "attempted to rape her." J.W. was 10 or 11 years old; M.T. was 7 years old. She was alone with him in his bedroom when he tried to hug her and pull down her pants. J.W. "was lying on top of [her] and trying to kiss [her]." He also moved his body "up and down." While J.W. was "trying to do all kinds of things" to M.T., she started "kicking him and kicking him," eventually freeing herself. She pushed him off and ran out of the bedroom. When M.T. told Mother, Mother was "shocked" and "deeply, deeply mad" at J.W. Mother used the word "molested" to describe what J.W. had done to M.T. When asked about how she felt about everything that had happened, M.T. said "I felt scared, but inside of me, I felt brave."

M.T. reported that while visiting Mother during the 2016 summer vacation, Mother would go to work and leave M.T. alone and unattended, sometimes for eight hours.

M.T. described the recent incident between Mother and MGM during which Mother hit MGM and grabbed her phone to prevent her from making a call. Mother and MGM were arguing because Mother wanted to take M.T. with her and MGM would not allow it. M.T. cried, after which Mother dragged M.T. into the car and pulled

³ In interviewing M.T., the DCFS social worker observed that she had some mild developmental and/or speech delays. The record also reflects that M.T. was diagnosed with mild autism when she was two years old.

her hair in the process. M.T. also described an incident which occurred two years earlier, when Mother hit MGM on the head with her fist, in M.T.'s presence, while MGM was doing laundry. M.T. called 9-1-1, and paramedics took MGM to the hospital. Nothing in the record discloses the extent of MGM's injuries, if any.

Mother denied that M.T. was sexually abused. The incident with J.W. occurred two years earlier, when the families got together for Thanksgiving dinner. The adults were downstairs while the children were upstairs playing. Some of the children told Mother that J.W. and M.T. had kissed. Mother and J.W.'s mother had a "serious talk" with all the children, explaining that this is unacceptable behavior. M.T. was "embarrassed due to the kiss." According to Mother, it was Father who "turned things around" when he reported that J.W. had raped M.T. when all M.T. said was that J.W. "kissed" her. Mother added that M.T. no longer has any contact with J.W.

As for the recent incident involving MGM, Mother explained that she was attempting to pick up M.T. to take her to a dental appointment when MGM refused to allow her to do so, stating that Father had obtained a restraining order against Mother. Having no knowledge of a restraining order, Mother told M.T. to get into the car, and, when MGM attempted to make a phone call, Mother grabbed the phone from MGM and the phone broke into two pieces. Mother denied punching MGM, and suggested that MGM may have sustained injuries while they were wrestling for the phone. Mother denied dragging M.T. or pulling her by the hair.

Contrary to M.T.'s report, Mother denied leaving M.T. alone unattended, explaining that there is at most a 30-minute gap between the time she leaves for work and the time Anthony returns home from work.

On October 3, however, when the social worker arrived at Mother's home around 11:30 a.m., M.T. was alone. M.T. told the social worker that Mother and Anthony had left for work that morning at about 8:00 a.m. and were expected back around 4:00 p.m.

On October 6, 2016, DCFS filed a petition alleging Mother physically abused M.T. by "pulling [M.T.'s] hair and dragging [M.T.] by [her] hair," and pushing M.T. into a vehicle (counts a-1,b-2); engaged in violent altercations with MGM, including, among other things, on July 28, 2016, striking MGM's face in M.T.'s presence, bruising MGM's eye and causing redness and bleeding to her ear, and breaking MGM's phone, and striking MGM with her fist in M.T.'s presence, requiring medical care (counts a-1, b-3); failed to protect M.T. from sexual abuse by J.W., a 13-year-old unrelated child, in that Mother knew of the abuse and allowed J.W. to have unlimited access to M.T. (counts b-1, d-1); and left M.T. without adult supervision for about eight hours—later amended to six hours (count b-4).

At the detention hearing held the same day, the juvenile court released M.T. to Father, but authorized M.T.'s continued residence with MGM. Mother was allowed monitored visitation.

On November 30, 2016, in a "Last Minute Information for the Court," the DCFS social worker acknowledged that M.T. "has made inconsistent statements regarding the sexual abuse, which is not unusual for a child of her age and developmental limitations (diagnosed on the autism spectrum)." The social worker indicated that although M.T. "waffles on the details," the basics remained the same: J.W. attempted to restrain and kiss M.T. and remove her pants, but she managed to kick and fight him to get away. The social worker opined that "[g]iven [her]

cognitive limitations . . . it is doubtful that she could consistently fabricate elements of the sexual abuse if she had not in fact experienced them.”

At the jurisdiction/disposition hearing held on December 8, 2016, M.T. testified in chambers that Mother leaves her alone from 8:00 a.m. to 4:00 p.m., and that Anthony leaves for work “at 10:00” (i.e., although Anthony later testified that his work began at 10:00 p.m., we presume that M.T. meant 10:00 a.m.) When Anthony leaves at 10:00, she is home alone until Mother comes back at 4:00. When she is alone she feels “[k]ind of scared, worried about anybody . . . trying to break the window or . . . grab me and take me to their house and try to kill me.” She has a phone to call Mother.

M.T. also testified that sometime after the incident with J.W., Mother took her to J.W.’s birthday party at a “Chinese place.” She was “[w]orried, because it was [J.W.] And [she] didn’t see [him] for a very long time.” She was worried “[i]f he was going to do it to [her] again.” She did not tell Mother she was worried, but Mother could see she was nervous because she was “kind of shaking for a moment.” Mother said, “I know you are nervous. I know what happened last time. It is not going to happen again.”

Anthony testified that he was at home while Mother was at work. Mother’s working hours were from 8:00 a.m. to 4:00 p.m. or 5:00 p.m.; Anthony worked a graveyard shift from 10:00 p.m. to 7:00 a.m. He would get home around 7:30 a.m., “the time that [Mother] is going to be leaving to go to work.” M.T. was generally asleep when he came home from work. He and Mother later changed their work schedules; Mother now works from 7:00 p.m. to 3:00 a.m., so she can take M.T. to and from school, and he is at home with M.T. while Mother is at work. M.T. had seen J.W. only

once since the incident, at J.W.'s birthday party at an amusement park. J.W. has since moved and "doesn't come around at all."

The juvenile court found by a preponderance of the evidence that the counts in the petition were true and found M.T. to be a person described by section 300. As for the counts pertaining to the incident with J.W., the court said it was persuaded by M.T.'s testimony that, when she went to J.W.'s birthday party, she was worried that he would "do the same thing." This, said the court, amounts to a failure to protect.

The juvenile court also found by clear and convincing evidence that there would be a substantial danger to M.T.'s "physical health, safety, protection or physical or emotional well-being" if returned to Mother's care. The court ordered M.T. to be released to Father, but to reside with MGM, with Mother to have monitored visitation. The court further ordered individual counseling for M.T. to be followed by co-joint counseling with Mother and Father should M.T.'s therapist deem it appropriate. The court ordered Mother to participate in parenting classes, sex abuse awareness counseling, and individual counseling.

Mother's timely appeal followed.

DISCUSSION

"When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence. [Citations.]" (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) As indicated

above, Mother does not challenge the juvenile court's finding under section 300, subdivision (b)(1), that on more than one occasion she left M.T. home alone for up to about six hours without adult supervision.⁴ Mother acknowledges this, but asks us to reach the merits of her challenge, insisting that the findings could be prejudicial to her in that they could potentially impact her in future proceedings, including any potential custody dispute with Father. We decline to do so.⁵

Although we conclude that the unchallenged allegation supports the juvenile court's exercise of jurisdiction over M.T., we agree with Mother that substantial evidence does not support the court's disposition removing M.T. from Mother's home. "Section 361, subdivision (c)(1),^[6] provides children 'shall not be removed from

⁴ Nor does Mother challenge the juvenile court's findings regarding her alleged physical abuse of M.T. under subdivisions (a) and (b)(1) or the alleged domestic violence between Mother and MGM under subdivision (a)(1). We find persuasive, however, Mother's assertion that these were "isolated incidents which stemmed directly from the discord" between them.

⁵ As may be apparent from our discussion below regarding M.T.'s removal from Mother's custody, there are serious questions regarding whether substantial evidence supports those allegations. We do not, however, reach that issue because it is unnecessary to our limited review.

⁶ DCFS contends the juvenile court erroneously made findings under section 361, subdivision (c) because, although Mother had primary physical custody of M.T., M.T. was merely "visiting," not "residing with" Mother at the time the petition was initiated. DCFS contends, however, citing *In re Anthony Q.* (2016) 5 Cal.App.5th 336, 353-356, that the juvenile court had authority to remove M.T. from Mother's custody under sections 361,

the home in which they are residing at the time of the petition unless there is clear and convincing evidence of a substantial danger to the [child's] physical health, safety, protection, or physical or emotional well-being *and* there are no "reasonable means" by which the [children] can be protected without removal.' [Citation.] '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.]' [Citation.]" (*In re Noe F.* (2013) 213 Cal.App.4th 358, 367.)

"On appeal from a dispositional order removing a child from [his or] her parent, we apply the substantial evidence standard of review, keeping in mind that the trial court was required to make its order based on the higher standard of clear and convincing evidence. [Citation.]" (*In re Noe F.*, *supra*, 213 Cal.App.4th at p. 367.) "The high standard of proof by which this finding must be made is an essential aspect of the presumptive, constitutional right of parents to care for their children." (*In re Henry V.* (2004) 119 Cal.App.4th 522, 525.) "Clear and convincing evidence requires a high probability, such that the evidence is so clear as to leave no

subdivision (a), and 362, subdivision (a), and that the error is harmless because there was, in any event, clear and convincing evidence of substantial danger to M.T. if she were returned to Mother's custody. Because we conclude that the removal order was *not* supported by clear and convincing evidence, we need not consider the issue.

substantial doubt.” (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 695.)

Applying these principles, we conclude that substantial evidence does not support the juvenile court’s finding that there would be a substantial danger to M.T.’s physical health, safety, protection or physical or emotional well-being if she were returned to Mother’s custody.

With respect to the incident involving M.T. and J.W., even if it is true that J.W. acted in an inappropriate sexual manner, nothing in the record suggests that Mother was negligent in allowing the inappropriate conduct. Further, after the incident, Mother made sure that M.T. had no further contact with J.W., with one exception, and that was at a public place, over a year later and with Mother present. When Mother became aware that M.T. was nervous about being in J.W.’s presence, Mother assured her that “what happened last time” would not happen again. And nothing in the record suggests that Mother failed to follow up on her promise not to allow J.W. to have contact with her daughter again. Consequently, we fail to see how returning M.T. to Mother’s custody would create a substantial danger that such an incident would reoccur. At most, Mother erred in bringing M.T. to J.W.’s birthday party. But a one-time parental error does not justify a child’s removal from a parent unless there is good reason to believe the error will reoccur. Here there is none. (See *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.)

As for the altercations between Mother and MGM, these were two isolated incidents, one of which was provoked by MGM’s unwarranted refusal to let M.T. go with Mother to a dental appointment, and which caused M.T. no injury. The other incident occurred several years earlier, and, although MGM was transported

to the hospital, nothing in the record shows that MGM was injured. In any case, such confrontations are not likely to reoccur; if M.T. were released to Mother there would be no reason for Mother and MGM to have any contact. Moreover, nothing in the record suggests that Mother had ever used physical punishment or restraint in the past that would create a cause for concern that she might injure M.T. in the future. Thus, any suggestion that M.T. was at risk of future serious injury is pure speculation.

Lastly, with respect to Mother's neglectful conduct in leaving M.T. alone without adult supervision while Mother was at work, the record demonstrates that Mother had already rectified any lack of supervision by modifying her work schedule to enable her to take M.T. to and from school and arranging that Anthony would be at home when Mother was not. Consequently, we have no reason to believe that M.T.'s safety would be placed in jeopardy should she be returned to Mother's custody.

DISPOSITION

The jurisdictional findings and orders are affirmed. The dispositional order is reversed and the matter is remanded with directions to implement a new disposition in accordance with the views expressed herein.

NOT TO BE PUBLISHED

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

LUI, J.