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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re DWAYNE B., JR., et al., Persons
Coming Under the Juvenile Court Law.

B236586

(Los Angeles County
Super. Ct. No. CK89050)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Rudolph Diaz, Judge. Affirmed.

Merrill Lee Toole, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

T. M. (mother) and Dwayne B., Sr. (father) are the parents of Dwayne B., Jr. (Dwayne Jr., born Feb. 2004) and Damion B. (born Mar. 2006). On September 30, 2011, the juvenile court sustained a petition declaring the children dependents of the court pursuant to Welfare and Institutions Code section 300, subdivision (b).¹ Mother appeals the jurisdictional order and findings as to her. We affirm.

FACTUAL AND PROCEDURAL HISTORY

I. Petition and Detention

The Department of Children and Family Services (DCFS) filed a juvenile dependency petition as to Dwayne Jr. and Damion on July 25, 2011. In count b-1, it alleged: “The children . . . were exposed to violent physical altercations between [mother and father] in which the father slapped the mother, pulled the mother’s hair and grabbed the mother’s arms, inflicting a scratch mark on the mother’s arm. The mother failed to protect the children in that the mother allowed the father to have unlimited access to the children. The father has a criminal history of a conviction of inflicting Corporal Injury to a Spouse. Such violent conduct on the part of the father against the mother in the children’s presence and the mother’s failure to protect the children endanger[] the children’s health and safety and place[] the children at risk of physical harm, damage, danger, physical abuse” The physical altercations between mother and father were alleged to give rise to jurisdiction pursuant to section 300, subdivision (b).²

DCFS filed a detention report on July 25, 2011. It stated that the department received a referral on March 28, 2011, alleging general neglect of the children. A children’s social worker (CSW) attempted unsuccessfully to locate the family between March 28 and May 28, 2011. On June 22, 2011, the CSW met with the receptionist of

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

² The petition also alleged jurisdiction pursuant to section 300, subdivision (a), but that allegation was dismissed by the juvenile court.

the apartment complex from which the family had recently moved. She stated that the family had been evicted in April 2011 because of criminal activity in the home, including two police raids. During the most recent police raid, the officers found weapons and drugs and arrested father. The receptionist also reported that she had witnessed a violent altercation between father and mother in which father pulled mother's hair.

On June 22, 2011, the CSW spoke to Dwayne Jr. at school. He was neatly dressed and there were no visible marks or bruises on his body. Dwayne Jr. told the social worker that he did not know about drugs or gangs and denied witnessing any violence between his parents. He said he lived with mother and visited father on the weekends. He said he was not afraid of mother or father.

On June 24, 2011, the CSW met with mother and the children. Mother said that since April 2011, she and the children had been living with Ulysses D., a family friend whom she considered her "grandfather" or "godfather." She claimed not to know where father was living, but said he likely was staying with his grandmother, his aunt, or a friend. She said that when the children visited father, she supervised to be sure they were safe. She claimed father never exposed her or the children to drugs or gang activity, but she did not know what he did when he was not with her. She denied that she or father were neglectful.

Mother reported that she had a bad temper and an "anger problem." When she was younger, she went to anger management classes. She said she currently was three months pregnant with father's child and would like to resume a relationship with him, but knew he needed to change his lifestyle. She did not admit that father was in a gang, but said she did not like to leave the children alone with him.

The CSW also spoke to Ulysses D., who said he had concerns about father. He did not think father was a good parent because he did not have a job or otherwise take care of the children. Ulysses D. said he had known mother and her family for a long time and tried to help her as much as he could. He said he believed mother was afraid of father, and he did not allow father in his home.

The CSW spoke to mother about services for the family, and mother agreed to a voluntary maintenance case. She signed a safety plan in which she agreed that the children would not witness any domestic violence or criminal activity and that she or a responsible adult would monitor father's visits with the children.

The CSW interviewed Ulysses D. again on July 5, 2011. He said he had for many years assisted mother with housing and jobs, but that mother had lost both the housing and the jobs. She lost her last apartment "due to the activity that father was bringing around the home such as too many people being there and drug sales." He was concerned about the children, but said they currently were safe.

The CSW interviewed mother again on July 6, 2011. Mother again said that to her knowledge, father was not a gang member and did not sell drugs. She said that before she lost her apartment, father would come by on the weekends and sometimes they would have arguments that involved slapping and pushing. Mother was vague in her descriptions of these altercations and said, "no one's relationship is perfect." Mother acknowledged that father pulled her hair in front of the apartment manager, but she denied that she ever had visible injuries except for "maybe a scratch." She acknowledged that she had called the police to have father removed from the home and had sought a restraining order against him, but said that to get the restraining order, she "made stuff up and wrote it on there." She said father saw the children two to three times a week, and she was able to set up the visits when father called her from someone else's phone. She and father would pick a location to meet and she would bring the children to see him. She denied being afraid of father.

The CSW interviewed Damion and Dwayne Jr. on July 6, 2011. Damion said he liked where he was living and enjoyed seeing father. He denied ever seeing his parents hit one another and said mother and father never fought with anyone. Dwayne Jr. too denied seeing his parents fight with one another and said he never saw guns or drugs at his old house. He said he felt safe in Ulysses's home.

On July 20, 2011, the CSW asked mother for more information about the history of domestic violence between her and father. Mother was vague and said father slapped

her a couple of times a year ago but there were no bruises or bleeding. She said that in the course of their relationship, she and father had engaged in physical altercations seven or eight times. She admitted the children had been present two or three times, but claimed they were outside playing or in another room.

Based on the foregoing, DCFS detained the children from father and placed them with mother.

The court held a detention hearing on July 25, 2011. It found that continuance in father's home was contrary to the children's welfare and no reasonable means existed by which the children's physical or emotional health could be protected without removing the children from father's physical custody. It ordered the children placed with mother, and granted father monitored visitation.

II. Jurisdiction and Disposition

DCFS filed a jurisdiction/disposition report on September 2, 2011. Father's whereabouts were still unknown. As of September 30, 2011, DCFS remained unable to locate father.

The court held an adjudication hearing on September 30, 2011. The court found that DCFS exercised due diligence as to father. Mother's counsel asked that mother be stricken from the jurisdictional allegations, asserting that mother had not allowed father to be near the children since the filing of the petition and there was no evidence that the children had ever witnessed any incidents of domestic violence between mother and father. The children's attorney asked the court to sustain the allegations as to mother because mother conceded acts of domestic violence in the children's presence.

The court sustained the allegations of count b-1 of the petition, finding them established by a preponderance of the evidence. The court found that father posed a serious risk to the children and, although he "can't be found at this time, . . . there's no indication he's gone forever and that mother does not intend to associate with him." Further, the court found by clear and convincing evidence that there would be a substantial danger to the children if they were to return to father's home and there were

no reasonable means by which the children could be protected without removing them from father's custody. The court ordered the children placed with mother and ordered mother to participate in a domestic violence support group and individual counseling to address case issues. The court further ordered that father was not to live in or visit mother's home without DCFS's permission. The court denied father reunification services because his whereabouts were unknown.

Mother timely appealed from the court's jurisdictional and dispositional findings.

DISCUSSION

Mother does not suggest that the juvenile court erred in sustaining count b-1 of the petition as it relates to father's conduct, but she asks that she be stricken from the count because there is no substantial evidence that she failed to protect the children. She further contends that juvenile court jurisdiction was unnecessary because she should not have been included in count b-1 and father was denied reunification services. For the following reasons, we do not agree.

"[A] minor is a dependent if the actions of *either parent* bring [him] within one of the statutory definitions of a dependent. (*In re Jeffrey P.* (1990) 218 Cal.App.3d 1548, 1553-1554; see 2 Cal. Juvenile Court Practice (Cont.Ed.Bar Supp. 1996) Initiating Dependency Proceedings, § 15.5, p. 13.) This accords with the purpose of a dependency proceeding, which is to protect the child, rather than prosecute the parent. (See, e.g., *In re Malinda S.* (1990) 51 Cal.3d 368, 384.)" (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397, italics added.) Accordingly, because mother does not challenge the sufficiency of the evidence to support the jurisdictional allegations as to father, the juvenile court would properly have exercised jurisdiction over the children even if mother's conduct was not an independent basis for jurisdiction. (See, e.g., *In re Maria R.* (2010) 185 Cal.App.4th 48, 60.)

In any event, we find that there is substantial evidence to sustain the allegations as to mother, as well as to father. "A child is within the jurisdiction of the juvenile court

under subdivisions (a) and (b) of section 300 if he or she ‘has suffered, or there is a substantial risk that the child will suffer, serious physical harm,’ harm that is either ‘inflicted nonaccidentally upon the child by the child’s parent or guardian’ or results from ‘the failure or inability of his or her parent or guardian to adequately supervise or protect the child’ ‘[D]omestic violence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.’ (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) Children can be ‘put in a position of physical danger from [spousal] violence’ because, ‘for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg’ (*Ibid.*) [¶] ‘Both common sense and expert opinion indicate spousal abuse is detrimental to children.’” (*In re E.B.* (2010) 184 Cal.App.4th 568, 575-576.)

In *In re E.B.*, *supra*, 184 Cal.App.4th 568, the mother (and father) appealed from jurisdictional findings that resulted in their two children being detained with the mother. As to the mother, the petition alleged that violence between the parents endangered the children’s physical and emotional health. The mother contended she was exclusively the victim of domestic violence and that nothing she did or was likely to do endangered the children. (*Id.* at p. 575.) The court disagreed and affirmed the findings as to the mother: “Father’s past violent behavior toward Mother is an ongoing concern. ‘[P]ast violent behavior in a relationship is “the best predictor of future violence.” . . . Even if a batterer moves on to another relationship, he will continue to use physical force as a means of controlling his new partner.’ [Citation.] [¶] Mother admitted to DCFS that Father abused her emotionally and physically, the latter within the hearing of the children. When he verbally berated her after Daughter was born she would sometimes leave, but she always returned when he apologized. In February 2008 he struck her four times and the children heard her screaming, yet she stayed with him another seven months. Mother’s remaining in the abusive relationship, and her record of returning to Father despite being abused by him, supports the juvenile court’s finding that her conduct in the domestic altercations endangered the children.” (*Id.* at p. 576.)

In the present case, as in *In re E.B.*, substantial evidence supported the juvenile court's finding that domestic violence between mother and father put the children at risk of future harm. The court found—and mother does not contend otherwise—that father had behaved violently towards mother in the past. Substantial evidence supported that finding: the receptionist of the apartment complex from which mother had been evicted reported seeing a violent altercation between father and mother in which father pulled mother's hair; mother admitted that she and father had arguments that involved slapping and pushing, and said that in the course of their relationship, she and father had engaged in physical altercations seven or eight times; and mother admitted that the children had been present during two or three of these altercations, although she claimed they were outside playing or in another room.

Mother urges that notwithstanding these *past* incidents of domestic violence, the children are not at risk of *future* harm because she obtained a restraining order against father and no longer is involved in a relationship with him. We do not agree. Although there is some evidence that mother and father are not currently living together, mother is pregnant with father's child and told the CSW that she would like to resume a relationship with him. She does not appear to view father's acts of violence against her as a serious concern, telling the social worker that “no one's relationship is perfect.” Further, while she did obtain a restraining order against father, she told the social worker that she “made stuff up” in the restraining order application. In short, substantial evidence supports the juvenile court's conclusion that mother and father are likely to resume a relationship and expose the children to future acts of domestic violence that will endanger their health and safety.³

We conclude that the juvenile court did not err in sustaining the jurisdictional allegations as to mother.

³ For this reason, the present case is distinguishable from *In re J.N.* (2010) 181 Cal.App.4th 1010 and *In re B.T.* (2011) 193 Cal.App.4th 685, on which mother relies. In each of those cases, the court found no substantial risk of future harm to the children.

DISPOSITION

The jurisdictional order and findings are affirmed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.