

Filed 6/22/18 In re A.B. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

B287027  
(Los Angeles County  
Super. Ct. No. DK24193A-C)

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and Respondent,

v.

ANGEL B.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los  
Angeles County, Akemi Arakaki, Judge. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Brian Mahler, Deputy County Counsel for Plaintiff and Respondent.

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Angel B. appeals from the order sustaining jurisdiction over two of his children, A.B. and E.B.<sup>1</sup> pursuant to Welfare and Institutions Code section 300, subdivision (a).<sup>2</sup> He contends his history of violent altercations with their mother, Jessica Z., is not substantial evidence that his children are at risk of future nonaccidental physical harm inflicted by one or both of the parents. We affirm.

## **BACKGROUND**

### ***The Incident***

Jessica Z. (mother or Jessica Z.) is the mother of three children: N.A. (born December 2010), A.B. (born July 2015), and E.B. (born December 2016). Angel B. (father) is the father of two of them, A.B. and E.B.<sup>3</sup>

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<sup>1</sup> Mother is not a party to this appeal.

<sup>2</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

<sup>3</sup> Rafael A. is N.A.'s father.

At the time of the child welfare referral in this matter, mother and father had been in an “on and off” dating relationship for approximately five years. They maintained separate residences, but father frequently stayed at the home where mother and children lived.

On June 17, 2017, the Los Angeles County Department of Children and Family Services (DCFS) received a child welfare referral involving the family. A witness made a 911 call to report observing a physical confrontation between the parents in the presence of the children. The caller reported that mother and father were walking down the street while mother was pushing a stroller in which A.B. and E.B. were sleeping. N.A. was riding ahead on her bicycle. The parents were engaged in a verbal argument, when father “whip slapped” mother in the face with a T-shirt and then pushed her, causing her to momentarily lose her balance. Father took E.B. out of the stroller, but gave him to mother upon her request. He then took A.B. from the stroller and walked away with the toddler.

The police responded. Mother told them that father slapped her with a shirt, pushed her and walked away with one of the children. She did not have any visible injuries and refused an emergency protective order. When the police located father, who was still holding A.B., he denied he was physically violent with mother. When asked if he “whip slapped” her, he

responded, “No, how could I do that? The shirt was in the front seat of the stroller the whole time.” Father was arrested for battery against a spouse or cohabitant.

The court issued a criminal protective order restraining father from having any contact with mother on June 20, 2017.

On that same day, a children’s social worker (CSW) interviewed mother and N.A. Mother confirmed the events of June 17. She declined the voluntary services offered as unnecessary because the father did not live with her and the children. She also stated none of the children had ever witnessed any violence between her and father and she promised that their altercations would stop. N.A. said she enjoyed living in mother’s home and going to the park with the family. She denied being afraid of any adults in the home and ever witnessing any physical violence in the home, but stated she had heard mother and father scream at each other in the past.

On July 17, 2017, two CSWs interviewed father, who denied striking mother with the shirt and claimed he had only thrown it at her. He admitted pushing her so he could get past her to take a walk to calm down, but claimed it was not a forceful push. He explained he walked away with A.B. because he previously had been taught in domestic violence classes to “take something that inspires him and walk with it” as a means to control his anger. He informed the CSW that mother recently

ended their relationship and he stated he would comply with the criminal protective order. He also declined voluntary services and reported that he had been ordered by the court to enroll in a domestic violence prevention program.

On July 18, 2017, the CSW interviewed the bystander who witnessed the confrontation between the parents. The bystander saw the parents pushing each other, followed by mother standing between father and the stroller, as if to “shield” the children from father. She saw father pick up A.B. and run down the street with the child, all the while continuing to argue with mother.

### ***Father’s Prior Domestic Violence History***

Father has a third child, L.B., with another woman. L.B. lives with his paternal grandparents. The grandparents told the CSW that in September 2016, father asked if L.B. could stay with them during the school week because L.B. was doing poorly in school. Father stated he would pick up L.B. after school on Fridays and keep him over the weekend, but he never did. He visited L.B. once and then severed all contact with his son and the grandparents. L.B. told grandfather that when he lived with his father and Jessica Z., they engaged in verbal and physical altercations on a daily basis in the presence of the children and that they drank alcohol daily to “the point of intoxication.” L.B. recalled one incident in 2015 or 2016 when father pulled mother’s hair and refused to let go, so she scratched father and punched

him in the chest and stomach. L.B. described living with father and mother as “the worst thing” because they drank and argued.

Father, mother and L.B. were involved in dependency proceedings in August, 2014. The juvenile court sustained a petition alleging the parents had engaged in a physical altercation in L.B.’s presence where father struck mother with his fists, threw her onto the bed, pinned her down with his body and mother struck father in the head with her fists. Father was ordered to participate in drug testing, a domestic violence program and an anger management program. He complied and jurisdiction was terminated in August 2015.

Father also had an arrest history for engaging in physical abuse. He was arrested for battery upon a spouse or cohabitant in July 2014, for inflicting corporal injury upon a spouse or cohabitant in February 2015 and again for battery against a spouse or cohabitant on June 17, 2017, resulting in this dependency petition.

On August 1, 2017, N.A., A.B., and E.B. were removed from the mother’s home. Mother questioned why they were taken from her, given that her relationship with father had ended and she had a protective order against him. Father also said he did not understand the need for the removal, denying that the recent physical altercation had occurred and claiming the last incident of physical violence was in 2015.

### ***Dependency Petition and Detention Hearing***

On August 4, 2017, DCFS filed a petition alleging the children were endangered under section 300, subdivisions (a) and (b)(1), based on the violent conduct between the parents in the children's presence and the parent's respective issues with alcohol abuse. At the detention hearing of the same day, the court released N.A. to her father, Rafael A., detained A.B. and E.B. from father and mother, and granted the parents monitored visitation. Father was ordered to attend an anger management program. Both parents were ordered to submit to random and on demand drug and alcohol testing.

### ***Jurisdiction and Disposition Report***

A dependency investigator interviewed N.A. Although she was hesitant to respond to questions concerning problems in the home, she did admit that mother and father fought "with their words and with their hands sometimes."

The investigator also obtained the Jurisdiction and Disposition Report from the 2014 dependency proceedings, which stated that mother had disclosed to the family court that there was ongoing domestic violence between the parents. Specifically mother claimed father had raped her twice, slapped her, and punched her and choked her to the verge of unconsciousness. She did not report those incidents to the police when they occurred.

### ***Combined Jurisdiction and Disposition Hearing***

On August 25, 2017, the juvenile court held a combined jurisdiction and disposition hearing. The court dismissed the alcohol abuse counts and sustained both domestic abuse counts pursuant to section 300, subdivisions (a) and (b) to read as follows:

“The children [N.A.], [A.B.] and [E.B.’s] mother, [J.Z.] and the mother’s male companion [Angel B.], father of the children, [A.B.] and [E.B.], have a history of engaging in violent altercations in the presence of the children. On 6/17/17, [father] struck the mother’s face with a t-shirt. [Father] pushed the mother, resulting in the mother losing her balance. [Father] pulled the mother’s hair. On prior occasions, the mother and [father] pushed each other in the presence of the children. On a prior occasion, the mother scratched and hit [father]. The mother punched [father]. On 6/17/17, [father] was arrested for Domestic Violence–Battery of a Cohabitant in a Dating Relationship. The children [A.B.] and [E.B.’s] half sibling, [L.B.], was a prior dependent of the Juvenile Court due to the father engaging in domestic violence with the mother. The mother failed to protect the children in that the mother allowed [father] to reside and frequent in [sic] the children’s home and have unlimited access to the children. The violent conduct by father and the mother, and the mother’s failure to protect the children, endangers the



children's physical health and safety, create[s] a detrimental home environment, and place[s] the children at risk of serious physical harm and damage, danger and failure to protect.”

The court declared the children dependents of the court and removed the children from the parents.

### ***Notice of Appeal***

Father filed a Notice of Appeal from the combined jurisdiction and disposition order on October 6, 2017.

## **DISCUSSION**

### ***Justiciability***

Father appeals from the finding of jurisdiction under section 300, subdivision (a), applicable where the child has suffered or is at substantial risk of suffering, serious physical harm, inflicted nonaccidentally by the child's parent, but does not appeal from the additional jurisdictional finding under subdivision (b), applicable where the harm or risk of harm results from the failure of the parent to adequately protect the child. In light of the appeal's limited scope, DCFS argues it should be dismissed because the unchallenged findings as to father and mother will continue to support dependency jurisdiction pursuant to section 300, subdivision (b), even if the appeal is successful.

“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 [trial] 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.’ (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) However, [the appellate court] generally will exercise [its] discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal (see, e.g., *In re Alexis E.*, *supra*, at p. 454; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings (*In re D.C.* (2011) 195 Cal.App.4th 1010, 1015; see *In re I.A.* (2011) 201 Cal.App.4th 1484, 1494; or (3) ‘could have other consequences for [the appellant], beyond jurisdiction’ (*In re I.A.*, *supra*, at p. 1493 [not reaching the merits of an appeal where an alleged father ‘has not suggested a single specific legal or practical consequence from this finding, either within or outside the dependency proceedings’])).” (*In re Drake* (2012) 211 Cal.App.4th 754, 762-763.)

Here, father was an offending parent in a prior dependency case premised upon domestic violence and has been found to be an offending parent in this second proceeding involving domestic violence findings. The juvenile court is likely to consider that

ostensible history of violence in determining whether to order reunification services in this, or any future proceeding. Accordingly, the court will exercise its discretion to decide this appeal.

***Substantial Evidence Supports the Jurisdictional Findings that Father's History of Violence Directed at Mother Places the Children at Substantial Risk of Suffering Nonaccidental Physical Harm***

Father contends that the jurisdictional findings against him under section 300, subdivision (a) are not supported by substantial evidence. Subdivision (a) provides for jurisdiction when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, inflicted *nonaccidentally* upon the child by the child’s parent or guardian. . . .” A finding of jurisdiction under this subdivision is reviewed for substantial evidence and is affirmed if there is reasonable, credible evidence of solid value to support it. (*In re Jonathan B.* (2015) 235 Cal.App.4th 115, 118-119.) The appellate court reviews the record as a whole in the light most favorable to the juvenile court’s order. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649.)

Father argues jurisdiction is inappropriate under section 300, subdivision (a) because there is no allegation that the children suffered any physical harm or that they were ever placed

in any situation where they could possibly have sustained serious physical injury, either accidentally or nonaccidentally, as a direct consequence of actions by either parent. He claims it is clear DCFS did not consider serious nonaccidental physical injury to be a significant risk in this matter because it did not place the children into protective custody until seven weeks after the incident, the children were not involved in the incident and the incident did not involve severe domestic violence in his estimation.

While there is no evidence these two children were physically abused in the June 2017 incident, father's argument fails to appreciate the risk of harm his past history of an inability to control his anger poses to them in the future. (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383 [risk of harm, not certainty of harm, is enough [under subdivision (b)]; the court "need not wait until the child is seriously abused or injured to assume jurisdiction"].)

"Although 'the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm' (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824), the court may nevertheless consider past events when determining whether a child presently needs the juvenile court's protection. (*In re Melissa H.* (1974) 38 Cal.App.3d 173, 174; *In re Troy D.* (1989) 215 Cal.App.3d 899-900.) A parent's past conduct

is a good predictor of future behavior. (*In re Petra B.* (1989) 216 Cal.App.3d 1163, 1169-1170.) ‘Facts supporting allegations that a child is one described by section 300 are cumulative.’ (*In re Hadley B.* (2007) 148 Cal.App.4th 1041, 1050.) Thus, the court ‘must consider all the circumstances affecting the child, wherever they occur.’ (*Id.* at p. 1048.)” (*In re T.V.* (2013) 217 Cal.App.4th 126, 133.)

Domestic violence between a child’s parents may support the exercise of jurisdiction where there is evidence the violence is ongoing or likely to continue and places the children at risk of harm. (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1453; see also *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717.) Children are “[o]bviously . . . put in a position of physical danger” in those circumstances because 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, or by [the victim] falling against them.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194, fn. omitted.)

Here, the parents have a significant history of domestic violence requiring the intervention of the police and DCFS. Father has been arrested three times for battery upon, or corporal injury to, a cohabitant. In addition, father was the offending parent in a prior dependency action involving domestic violence. L.B. told the CSW in that matter that he had witnessed the parents drink excessively and fight when he lived with them.

He recalled one incident where father pulled mother's hair and would not let go, provoking mother to scratch and strike father. Mother told the CSW in that prior dependency matter that father had raped her, slapped her, punched her and on multiple occasions, had choked her almost to unconsciousness. N.A. confirmed that mother and father fought "with their words and with their hands sometimes."

The juvenile court could reasonably conclude that the domestic violence between the parents was ongoing or likely to continue. Even though father reported mother had terminated their relationship, the "on and off" nature of their relationship in the past is reason enough to believe they will reconcile at some point. Father admits even now that he has poor impulse control, gets angry easily and still needs help with his anger management, despite having participated in a domestic violence prevention program. Mother agrees that father can be "violent when angered," that he has "a problem with anger and self-control," and that the classes he took "didn't teach him how to control his anger." She also admits to having anger issues herself. She knows she plays a part in the violence in their relationship and she recognizes that remaining with father "puts her kids at risk." The risk to these two children is not a mere abstract possibility. Father has already turned his anger on one of his children. L.B. told the CSW that he did not want to return

to his father's care because his father and Jessica Z. were "not nice" and "used to hit [him]."

Father does not believe that slapping the mother with his T-shirt and pushing her out of his way was domestic violence. Mother also minimizes the June 2017 incident, stating she "didn't think it was a big deal" and that she did not really consider the incident to be domestic violence because "all [the father] did was throw a t-shirt at [her]." Because mother and father apparently do not recognize what constitutes domestic violence or how to resolve it, the juvenile court determination that the children remain at risk is supported by substantial evidence.

## DISPOSITION

Substantial evidence supports the juvenile court's findings that the parents' history of engaging in violent altercations placed the children at substantial risk of suffering serious physical harm inflicted nonaccidentally upon them by one or both of their parents. We affirm.

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\_\_\_\_\_, J.\*  
MATZ

We concur:

\_\_\_\_\_, Acting P. J.  
CHAVEZ

\_\_\_\_\_, J.  
HOFFSTADT

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.