

Filed 8/24/17 In re I.C. CA2/1

**NOT TO BE PUBLISHED IN THE OFFICIAL
REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA**

SECOND APPELLATE DISTRICT

DIVISION ONE

In re I.C., a Person Coming Under
the Juvenile Court Law.

B278343
(Los Angeles County
Super. Ct. No. DK17786)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

CLAUDIA C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Teresa Sullivan, Judge. Reversed.

Aida Aslanian, under appointment by the Court of Appeal, for Defendant and Appellant.

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

Claudia C. (mother) appeals from the juvenile court's order of dependency jurisdiction over I.C. (child), age nine, under Welfare and Institutions Code section 300, subdivision (b)(1) (failure to protect),¹ on the ground that no substantial evidence supports the order. Because the evidence was insufficient to show a substantial risk of serious physical harm or illness to the child, we reverse.

BACKGROUND

I. Department of Children Family Services investigation

Mother and father filed for divorce in 2010, when the child was three years old. Under a family law order, mother and father share physical custody of the child, with mother having sole custody during the week and the father sole custody every other weekend.

Between April 2008 and March 2016, the child was the subject of 10 child welfare referrals to the Los Angeles

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

County Department of Children and Family Services (DCFS). The referrals variously alleged that the child was the victim of abuse or neglect by mother, father, a paternal grandmother, and by a paternal uncle. Six of those referrals were closed as unfounded, three were closed as inconclusive, and one was “evaluated out.”

In early April 2016, DCFS received yet another referral, this one alleging that the child was the victim of general neglect by father. A subsequent investigation by DCFS revealed a number of concerns, not about father, but about mother and child, including the following: mother and child lacked “housing and support;” the child often came to school “hungry” and with “clothes dirty”; the child’s absences from school were “chronic”; the child was “often” left at an after-school program “after normal hours”; and that mother’s behavior was “irrational and unpredictable.” For example, the assistant principal of the child’s school reported to DCFS that after delivering the child to school, mother would “stay on campus harassing children, lingering around for hours, making inappropriate comments to staff, and hiding in classrooms during school hours.” The school’s pupil services and attendance counselor observed that the child “appears stable when in father’s care. [The child] is clean and well kept when she comes from father’s home on the weekends, but mother often times disappears so father’s visitation is not consistent.” The counselor reported that she is “very concern[ed]” for the child while in the care of the mother.

As part of its investigation, DCFS interviewed the child. To the DCFS social worker, the child “appeared healthy with no visible marks or bruises.” The child denied the allegations of the referral, as well as being the victim of sexual abuse or corporal punishment.

In early June 2016, the DCFS social worker received a call from the assistant principal, who reported that the child had been enrolled in a different school. Although the child was enrolled in a new school, mother attempted to force herself and the child onto a bus for a field trip originating from the old school. The assistant principal reported that “mother’s appearance and mental health appeared to be declining.”

The DCFS social worker subsequently visited the child’s new school and interviewed the principal, who stated that he had “major concerns” about mother, that mother was not acting rationally and had, among other things, left the child unattended at an after-school program for hours while she ran errands. The principal of the new school also reported that the child “is not always clean and often complains of being hungry.”

II. DCFS’s petition

On June 4, 2016, DCFS obtained an order authorizing it to remove the child from mother’s custody.

On June 8, 2016, DCFS filed a petition pursuant to section 300, subdivision (b)(1), alleging mother failed to provide the child with stable housing and adequate food (the b-1 allegation). The petition further alleged the child was at

risk of “serious physical harm and damage” due to mother’s “erratic behavior” and “mental and emotional problems,” as evidenced by her “taking the child to a school when the child was no longer enrolled” (the b-2 allegation).

On that same day, the juvenile court conducted a detention hearing. The court ordered the child released to father and ordered monitored visits for mother (a minimum of three visits per week for a minimum of two hours per visit). The court also gave DCFS the discretion to further liberalize mother’s visitation.

III. The jurisdiction and disposition hearing

On September 13, 2016, the court held a combined jurisdiction and disposition hearing. The only witness to testify was mother. Mother denied the allegations of the petition and disputed, among other things, the descriptions of her conduct at the child’s schools as found in various DCFS reports detailing the results of its investigation into the April 2016 referral, which the court admitted into evidence.² Mother admitted she and the child primarily lived in their car during the month before the child was detained. Mother, however, stated that they stayed at hotels when they had funds to do so. Mother also testified the Department of Social Services provided her with a card so that she and the child could eat at restaurants. When these

² Those reports consisted of a “detention report” signed June 6, 2016, a “jurisdiction/disposition” report signed July 21, 2016, and a “last minute information for the court,” dated August 3, 2016.

funds were not available, she prepared food in other people's kitchen when she was permitted to do so. Mother said she ensured the child had adequate and healthy food.

After hearing argument from the parties, the juvenile court dismissed the b-1 allegation that mother failed to provide the child with stable housing and adequate food. The court explained that "mother's being forced to reside in a car is not jurisdictional in this court's mind, and certainly has not been proven as a factor of detriment to this child."

The court, however, sustained the b-2 allegation that mother's mental health posed a serious risk of physical harm, to the child. The court acknowledged that "[t]he fact that a parent may not be living a lifestyle that is consistent with the current social norm is not adequate for [DCFS] to insert government action and take the child from the mother." If the court had been relying on the mother's testimony alone, it would not have sustained the b-2 allegation. However, after considering the reports of various "uninvolved parties, many of whom are mandatory reporters," the court found that DCFS had met its evidentiary burden: when "the child's reports [of] being hungry" are considered in conjunction with "the reports from the school officials from a variety of different schools that the child is hungry and lacks hygiene that rises to the level of infestation and ridicule. [¶] I do find that [DCFS] has proven by a preponderance that [the b-2 allegation] as pled is true."

Having found that jurisdiction existed, the juvenile court further found, by “clear and convincing evidence . . . that there is a substantial danger if the child were returned to the mother to [the child’s] physical health, safety, protection, physical and emotional well-being, and there is no reasonable means by which [the child’s] physical health can be protected without removing her from the mother’s custody.” Accordingly, the court ordered that the child be released to father’s custody and that DCFS provide father with family maintenance and family preservation services. As for mother, the court ordered, among other things, DCFS to provide mother with referrals for mental health services, including a psychological and psychiatric assessment and individual counseling, and to provide mother with housing assistance.

Mother timely appealed.

DISCUSSION

I. Standard of review

We review the juvenile court’s jurisdictional findings for substantial evidence. (*In re John M.* (2013) 217 Cal.App.4th 410, 418.) “The term ‘substantial evidence’ means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value.” (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) Although substantial evidence may consist of inferences, the inferences must be logical, reasonable and supported by evidence; the inferences cannot be the product of speculation

or conjecture. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393–1394.) We review the evidence in the light most favorable to the juvenile court’s findings and draw all reasonable inferences in support of those findings. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) The juvenile court’s determination “will not be disturbed unless it exceeds the bounds of reason.” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.) A reviewing court may not “consider whether there is evidence from which the dependency court could have drawn a different conclusion,” but is limited to determining “whether there is substantial evidence to support the conclusion that the court did draw.” (*In re Noe F.* (2013) 213 Cal.App.4th 358, 366.)

II. The jurisdictional order was not supported by substantial evidence of a substantial risk of serious physical harm or illness

Section 300, subdivision (b)(1) provides for dependency jurisdiction where “[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 or guardian to adequately supervise or protect the child.” (Italics added.) “The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.” (*Ibid.*)

“ ‘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.] The third element ‘effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur).’ ” ” (*In re Jesus M.* (2015) 235 Cal.App.4th 104, 111.)

Section 300, subdivision (b), in other words, requires a showing of “concrete harm or risk of physical harm to the child.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 821.) “As appellate courts have repeatedly stressed, ‘ “[s]ubdivision (b) means what it says. Before courts and agencies can exert jurisdiction under section 300, subdivision (b), there must be evidence indicating that the child is exposed to a *substantial* risk of *serious physical* harm or illness.” ’ ” (*In re Jesus M.*, *supra*, 235 Cal.App.4th at p. 111.)

In re Jesus M., *supra*, 235 Cal.App.4th 104, is illustrative. In that case, “[t]here was evidence to suggest the children were suffering emotionally, but rather than allege emotional abuse under subdivision (c) of section 300, DCFS asserted jurisdiction under subdivision (b), presented vague evidence of emotional distress, and persuaded the court to assert jurisdiction in the absence of substantial evidence of a risk of serious physical harm. As the court found, Father had committed acts of domestic abuse years ago, but thereafter restricted his misconduct to harassing Mother and denigrating her to the children. Accordingly, as

the court recognized, the evidence supported ‘emotional[], not physical[]’ injury. Section 300, subdivision (b), does not provide for jurisdiction based on ‘ “emotional harm.” ’ [Citation.] Accordingly, the court could not properly assert jurisdiction over [the children] under subdivision (b) of section 300.” (*Id.* at p. 112, fn. omitted.)

Here, as in *In re Jesus M.*, *supra*, 235 Cal.App.4th 104, DCFS sought jurisdiction under section 300, subdivision (b) (physical harm), not under section 300, subdivision (c) (emotional abuse). And, as in *In re Jesus M.*, the evidence proffered by DCFS did not support a jurisdictional finding under section 300, subdivision (b). There was no evidence that the child had suffered serious physical harm or illness in the past as the result of mother’s inability to protect her or that there was a substantial risk that child would suffer serious physical harm or illness in the future as a result of mother’s limitations as a parent.

At best, there was only evidence suggesting that the child might be at risk of some emotional harm. However, neither DCFS nor the minor’s counsel presented evidence to show that the child suffered “severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others” as required under section 300, subdivision (c). And, on appeal, DCFS tellingly does not argue that the evidence was sufficient to sustain such a finding had it been pleaded

or that the case should be remanded so that DCFS can assert and prove an emotional abuse allegation.³

³ Evidence of emotional abuse necessary to justify jurisdiction under section 300, subdivision (c) is not easily found. For example, in *In re Brison C.* (2000) 81 Cal.App.4th 1373, the minor in that case was “caught in the crossfire of his parents’ frustration and anger with each other.” (*Id.* at p. 1376.) On appeal, the court found that, even though the parents’ conflict was causing the minor to suffer “upset, confusion and gastrointestinal distress” (*id.* at p. 1377) and to express “deep dislike and fear” of his father (*id.* at p. 1380), there was insufficient evidence to establish jurisdiction under subdivision (c) of section 300. Even assuming the parents’ conduct rose to the level of emotional abuse, the evidence did not show that the child was “seriously emotionally disturbed or that he was in substantial danger of suffering serious emotional damage.” (*Id.* at p. 1376.) The court reasoned that there was no psychological testimony to establish emotional damage, and the child had adapted well to being placed in foster care, was physically healthy, doing well in school, and affectionate with his mother. The only indication of emotional difficulty—the minor’s deep dislike and fear of his father—was understandable in light of evidence that his father had abused him, as well as his mother, and his half brothers. (*Id.* at p. 1380.) As the court in *In re Alexander K* (1993) 14 Cal.App.4th 549, 559, noted about the requirements for jurisdiction under subdivision (c), “It is clear from the overall scheme that the parental conduct branch of subdivision (c) seeks to protect against *abusive* behavior that results in severe emotional damage. We are not talking about run-of-the-mill flaws in parenting styles—we are talking about

In short, the evidence was insufficient to support the court's finding of dependency jurisdiction over the child under section 300, subdivision (b), because there was no evidence of a substantial risk of serious physical harm or illness to her. Without proper jurisdiction, the juvenile court had no authority to issue a dispositional order. (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1261; see § 362.4.)

DISPOSITION

The jurisdictional and dispositional order is reversed.
NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.

abusive, neglectful and/or exploitive conduct toward a child which causes any of the serious symptoms identified in the statute.”