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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re MIGUEL L. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MIGUEL L., et al.,

Defendants and Appellants.

B259833

(Los Angeles County
Super. Ct. No. DK07544)

APPEAL from orders of the Superior Court of Los Angeles County,
Philip L. Soto, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and
Appellant, Miguel L.

Roni Keller, under appointment by the Court of Appeal, for Defendant and
Appellant, Gladys J.

Office of the County Counsel, Mark J. Saladino, County Counsel,
Dawyn R. Harrison, Assistant County Counsel, and Tyson B. Nelson, Deputy County
Counsel, for Plaintiff and Respondent.

Both Gladys J. (mother) and Miguel L., Sr. (father) appeal the jurisdictional and dispositional orders concerning their nine-year-old son, Miguel L., Jr. (Miguel), and seven-year-old daughter, Giselle L. (Giselle). The parents argue there was insufficient evidence to support the court's finding that the parents' domestic violence placed their children at risk of harm and that, therefore, the dispositional orders fail as well. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On August 16, 2014, Miguel called 911 and told the operator his parents were fighting. The Department of Children and Family Services (Department) received a referral regarding the incident and interviewed the family. Mother said she and father were arguing and screaming at each other when father slapped her on the face, grabbed her by the wrists, and pushed her to the ground. According to mother, the children were present during the incident. Mother said this was the first time father had hit her.

Miguel said he heard his parents screaming and then saw mother slap father, and father hit and push mother. This was the first time he had seen his parents fighting. Giselle said she did not see her parents hitting each other but she heard them yelling. This was the first time "she [had] heard her parents screaming." The social worker tried to interview father as well, but he was not at the family home and could not be reached on the phone.

At a "team decision meeting" between the Department and mother on September 19, 2014, mother agreed to participate in a domestic violence program and counseling services. Father missed the meeting but spoke with the social worker later that day. He denied he had hit mother.

When father met with the social worker several days later, he admitted he had slapped mother. Father laughed during the interview and said the incident was not serious. "[E]veryone fights and hit[s] each other," he said. The social worker asked father if hitting a woman was okay. Father replied, "it is something that every couple does" and smiled at the social worker. When asked about the impact of domestic violence on his children, father said "the children have to learn that there are problems

and they have to deal with them.” Father said his actions were “ ‘normal’ ” and “he was not sorry for what he did”; however, he agreed to participate in services “ ‘[b]ecause [the Department] wants me to participate.’ ”

On September 25, 2014, the Department filed a petition alleging the children were placed at risk of harm by “father’s violent conduct against [] mother” -- in particular, the violent altercation on August 16, 2014.¹ The court detained the children and released them to mother on the condition that father not live in the family home.

In the Jurisdiction/Disposition Report, the Department reported the results of interviews with the family in October 2014. When asked about the incident, Miguel said this time that he “ ‘didn’t see anything’ ” but “ ‘just heard [his parents] arguing.’ ” Giselle said she heard mother say “stop it” and that she felt scared. Mother said again that father had slapped her and pushed her to the floor. Father said he and mother had “learned from this incident” and he “ ‘should have just told her that I didn’t like what she said instead of slapping her.’ ”

Both the parents and the children said there had never been any prior incidents of domestic violence. However, police dispatch records showed that mother had called the police about domestic violence in May 2013. The Department concluded that the August 16th altercation was not an isolated incident, and recommended that the court declare the children dependents.

At the jurisdictional/dispositional hearing on October 24, 2014, both mother’s and father’s counsel argued the domestic violence had been limited to one incident. The children’s counsel argued this was not a “one-time incident” based on evidence that mother had previously called the police to report domestic violence. Mother’s and father’s counsel objected to the admission of the police dispatch report on the ground that the report lacked foundation. The court overruled the objection.

¹ The petition also alleged that father had a history of substance abuse. That allegation was not sustained and is not at issue on appeal.

The court sustained the allegation that the children were at risk of harm under Welfare and Institutions Code² section 300, subdivision (b), based on father's violent conduct towards mother. The court stated, "[m]other, father . . . [t]his is really an issue of trust[,] and right now to say I don't trust you is an understatement. You're not admitting anything. . . . And it does appear to me that . . . [you] somehow -- directly or indirectly -- have influenced [your children's] statements so they're not admitting . . . and minimiz[ing] the situation to try and get dad home. . . . [¶] [T]his has been nothing but denial, denial, denial of this whole situation up until now. So it rings very hollow when on your behalf your counselor says, 'Oh, but now we understand. Now we are going to deal with it.' "

The court ordered the children removed from father's custody and granted him monitored visitation. Father was ordered to participate in a domestic violence prevention program, counseling, and random drug/alcohol testing, and mother in a domestic violence support group and counseling. The parents timely appealed.

CONTENTION

Mother and father contend there was insufficient evidence to support the jurisdictional finding and removal order because there was only one incident of domestic violence between them.³

DISCUSSION

Section 300, subdivision (b) provides a basis for juvenile court jurisdiction when the child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness as a result of the parent's failure adequately to supervise or protect the child. Here, the court sustained the allegation that Miguel and Giselle were placed at

² All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

³ Mother also argues the court erred in admitting the police dispatch report into evidence because it should have been excluded as unduly prejudicial under Evidence Code section 352. Mother did not raise this objection in the juvenile court. Therefore, this argument was forfeited. (*People v. Valdez* (2012) 55 Cal.4th 82, 138.)

risk of physical harm by “father’s violent conduct against [] mother.” Both parents argue that the record reflects only one incident of domestic violence between them which was insufficient to show the children were at risk of harm at the time of the jurisdictional hearing.

“[T]he question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm. [Citation.]” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824; but see *In re J.K.* (2009) 174 Cal.App.4th 1426 [distinguishing cases where the petition alleges that the minor has suffered prior serious physical harm under section 300].) “[P]revious acts of neglect, standing alone, do not establish a substantial risk of harm; there must be some reason beyond mere speculation to believe they will reoccur. [Citations.]” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 565.)

Here, mother and father selectively cite to the record when they argue there was evidence of only one incident of domestic violence between them. In fact, police dispatch records showed that mother had called the police about domestic violence in May 2013. Father also misrepresents the record when he argues he never “tr[ie]d to deny that [the August 16th incident] occurred,” but “recognized the inappropriate nature of the[] interaction” In fact, father initially *did* deny that he had hit mother and then claimed that the violence was “ ‘normal’ ” and “he was not sorry for what he did.”

Although father later acknowledged he should not have hit mother, it was within the court’s discretion to find that father’s belated show of remorse was not credible and that neither parent was credible in their denial of other incidents of domestic violence. (See *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393 [“ ‘When the sufficiency of the evidence to support a finding or order is challenged on appeal . . . all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.]’ . . . [Citation.]”]) Likewise, we will not disturb the trial court’s finding that the children were minimizing and denying the violence between their parents.

Accordingly, mother and father have not met their burden of showing there was no substantial evidence supporting the court's jurisdictional finding. (See *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 84 [the appellant bears the burden of affirmatively establishing error].) Evidence that the parents engaged in multiple incidents of domestic violence and exposed their children to their violent altercations -- most recently two months before the jurisdictional hearing -- was sufficient to support the court's jurisdictional finding under section 300, subdivision (b). (See *In re Heather A.* (1996) 52 Cal.App.4th 183, 194 [holding that a parent's failure to protect a child from exposure to domestic violence "*is* neglect; it is a failure to protect [the child] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. Such neglect *causes* the risk."]) Mother's and father's challenge to the dispositional order is based on the same arguments and, therefore, fails as well. On these grounds, we affirm.

DISPOSITION

The orders are affirmed.

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EGERTON, J.*

WE CONCUR:

EDMON, P. J.

KITCHING, J.

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