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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B282829
(Los Angeles County
Super. Ct. No. DK21240)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

EVELYN O. et al.,

Defendants and Appellants.

APPEAL from an order of the Superior Court of Los Angeles County, Julie Fox Blackshaw, Judge. Affirmed in part and reversed in part.

Richard L. Knight, under appointment by the Court of Appeal, for Defendant and Appellant, Evelyn O.

John P. McCurley, under appointment by the Court of Appeal, for Defendant and Appellant, Edison T.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, David Michael Miller, Deputy County Counsel, for Plaintiff and Respondent.

Evelyn O. (mother) and Edison T. (father) appeal from the juvenile court's March 14, 2017 order declaring minors A.O., Jasmine T., A.T., and Julian G. dependents of the court under Welfare and Institutions Code section 300, subdivision (b)(1) on two counts.¹ Mother and father contend substantial evidence does not support the juvenile court's jurisdictional findings. We affirm the juvenile court's order in part and reverse it in part.

BACKGROUND

Factual Background

Mother has five children: Scarlet O. (18 when the petition was filed), A.O. (born March 2000), Jasmine T. (born July 2002), A.T. (born Sept. 2005), and Julian G. (born Jan. 2008).² Scarlet and A.O.'s father is Roberto O.³ Edison T. is Jasmine, A.T., and Julian's father.

¹ Unless otherwise noted, statutory references are to the Welfare and Institutions Code.

² Scarlet was an adult by the time the proceedings below were initiated, and has not been part of these proceedings except as a witness. She lived in the family home during the events leading to the family's referral to the Los Angeles County Department of Children and Family Services and during the pendency of the resulting proceedings.

³ Roberto O. is not a party to this appeal. We refer to only Edison T. as father for ease of reading.

DCFS History

The petition below is a result of the family's fifth referral to the Los Angeles County Department of Children and Family Services (DCFS). In 2004, before A.T. and Julian were born, the family was referred for allegations of general neglect and physical abuse. The neglect allegations were based in part on the unsanitary conditions of the family's apartment, including a cockroach infestation that resulted in bug bites and allergic reactions in the minor children. The referral was closed after the family addressed the cockroach infestation.

In 2010, the family was again referred for general neglect. By January 2010, A.O. had been going to school with head lice for five months, and two other children were reported to have persistent head lice. DCFS provided the family a lice handout and closed the referral.

In March 2012, the family was again referred for general neglect. Several of the children had head lice problems that had persisted for two years. The parents were given resources including head lice shampoo, but failed to address the problem. This time, the parents were referred to Partnerships For Families (PFF) services to assist with the problem.

The family was referred again in June 2012 for persistent head lice problems. The parents had continued to ignore the head lice problem and declined PFF services because mother believed the PFF worker was judging her. DCFS also noted the condition of the home at the time.

In May 2015, the family was referred again. Though the referral was initially about Julian going to school hungry and tired, the condition of the family home was also an issue. Mother

cleaned the home by the time a Children's Social Worker (CSW) returned for a second assessment, and DCFS closed the referral.

November 2016 Referral

In November 2016, a referral alleged physical abuse to Julian.⁴ DCFS determined the parents had minimized Julian's very serious behavioral and emotional health issues and declined services to help Julian. Additionally, DCFS repeatedly flagged the home's unsanitary condition, and each time gave parents an opportunity to clean the home.

A. Julian's Behavioral & Emotional Issues

Julian's school referred him for counseling services in April 2016 for aggressive behavior toward other students. His parents declined, denying behavioral or emotional problems. After a school break, however, the problem escalated; Julian hit other children on a daily basis and hid under desks and in bookshelves. The school pressured the parents to put Julian in counseling. In September 2016, before the November referral, Julian began working weekly with a Psychiatric Social Worker.

In October 2016 and again in February 2017, Julian said that he planned to hang himself. When asked about wanting to hurt himself, Julian drew a depiction of him hanging himself, but also said that he was too young to kill himself.

While at school, Julian was accompanied one-on-one at all times by the principal, the school psychologist, or his teacher. Even after he began therapy, though, mother and father continued to minimize Julian's behavior and deny any problems.

⁴ The juvenile court struck all physical abuse allegations from the petition, and DCFS has not appealed. We do not discuss those allegations here.

Julian's therapist referred the family for more intensive mental health services, but the family did not qualify for the services after mother and father told the Department of Mental Health that no problems existed.

B. Condition of the Home

During a November 30, 2016 visit to the family home, one CSW saw dead roaches, dirt, and food on the living room floor, empty soda bottles and other items lying throughout the kitchen, dining room, and living room, old food left out in the living room and on the kitchen table, and said the home smelled like rotten food and mold. Father agreed to clean the home.

By December 29, the home had been swept and mopped, the old food and trash had been discarded, there was no food on the kitchen counter or dining table, and the home appeared cleaner than it had a month earlier.

By January 17 and 18, 2017, however, the home was again unsanitary. The CSW reported dirt, grime and food particles on the floor, piles of trash and dirty clothes, spiders and cockroaches on the ceilings and walls, old food, dirty dishes, and trash throughout the kitchen, an open bottle of bleach on the kitchen floor, thick layers of calcium and dirt on the toilet and bathroom faucet, and live and dead cockroaches in the refrigerator and on the kitchen floors and walls. The home also had a foul odor.

The home had again been partially cleaned by January 24. The old food and dirty dishes were gone, and some of the counters and the table had been wiped down. The floors and walls still had built up dirt and grime, but most of the cockroaches were gone. The bleach container had been put away, and the windows and door had been left open to improve the odor problem.

On February 17, 2017, there was again a foul odor, there were still spiders on the bedroom walls, and the bathroom and floors throughout the home looked grimy. There was also some discussion about the family dog occasionally being inside the home, and the need to clean up after the dog.

Procedural Background

DCFS filed a six-count non-detention petition on January 27, 2017, alleging jurisdiction under section 300, subdivisions (a), (b)(1), and (j). Counts a-1, b-1, and j-1 alleged physical abuse and failure to protect, count b-2 alleged that the unsanitary condition of the home put the children at risk of serious physical harm, and counts b-3 and j-2 alleged the parents' failure and inability to address Julian's behavioral and emotional problems and a resulting risk of serious physical harm to all of the children.

At the detention hearing on January 27, 2017, the juvenile court placed the children with DCFS pending disposition, and released all of the children to mother and father. The court held a jurisdiction and disposition hearing on March 14, 2017. The court determined that all of the minors were persons described by section 300, subdivision (b), dismissed counts a-1, b-1, j-1, and j-2, sustained count b-2 (regarding the home's condition), amended count b-3 by removing all of the minors except for Julian, and sustained amended count b-3 (regarding the parents' failure and inability to provide for Julian's behavioral and emotional problems).⁵

⁵ The March 14, 2017 minute order also purports to find jurisdiction under section 300, subdivision (j) and sustain counts j-1 and j-2. The sustained petition reflects the juvenile court's handwritten strikeouts of the subdivision (j) counts, and the reporter's transcript clarifies that the court intended neither to

The court ordered the children to be released to the parents and ordered family maintenance services for the parents. The parents timely appealed.

DISCUSSION

Parents contend the evidence in the record is insufficient to support the juvenile court's jurisdictional and dispositional findings. Specifically, parents contend no evidence causally links DCFS's neglect allegations with any substantial risk of serious physical harm. Parents argue this case involves a "loving-but-dirty" home, rather than a "case of real neglect." (See *In re Paul E.* (1995) 39 Cal.App.4th 996, 1005, fn. 8 (*Paul E.*)) Parents also contend substantial evidence does not support the juvenile court's jurisdiction determination regarding the parents' inability or failure to provide for Julian's behavioral and emotional health.

We disagree with the parents regarding the condition of the home, but agree with them regarding Julian's mental and

find jurisdiction under subdivision (j) nor to sustain counts j-1 and j-2.

There is no mechanical rule for resolving conflicts within the appellate record; resolution of each conflict depends on the circumstances of the case. (*People v. Smith* (1983) 33 Cal.3d 596, 599; *In re Kyle E.* (2010) 185 Cal.App.4th 1130, 1136.) We requested supplemental briefing to discern the parties' view of the conflict here. The parties agreed that the discrepancy in the minute order was clerical error and that the juvenile court intended to find jurisdiction under only subdivision (b) and to sustain counts b-2 and b-3. That is consistent with our review of the record. DCFS informs us that trial counsel has been instructed to request that the trial court correct its minute order. We will also order that the mistaken minute order be corrected.

emotional health issues. We will, therefore, affirm in part and reverse in part.

A. Legal Standards

Both of the jurisdictional findings arise under section 300, subdivision (b). “There are three elements to jurisdiction under section 300: ‘(1) neglectful conduct by the parent[s] in one of the specified forms; (2) causation; and (3) “serious physical harm or illness” to the minor, or a “substantial risk” of such harm or illness.’” (*In re Travis C.* (2017) 13 Cal.App.5th 1219, 1225 (*Travis C.*.)

“We review the trial court’s findings for substantial evidence. [Citation.] We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. [Citation.] The judgment will be upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence. [Citation.] [¶] Substantial evidence must be of ponderable legal significance. It is not synonymous with ‘any’ evidence. [Citation.] The evidence must be reasonable in nature, credible, and of solid value. [Citation.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order.” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

B. Condition of the Home

Mother contends the family home here was not “as clean, organized, or as tidy as another family might be—but that does not by itself justify a court taking jurisdiction over a family.” She directs us to several other “messy home” cases where the Court of Appeal did not find either a serious physical harm or illness or

the substantial risk of such an injury because of the home's condition.

In *Paul E.*, for example, the juvenile court established dependency jurisdiction and later removed Paul from his home based on conditions in his home. (*Paul E.*, *supra*, 39 Cal.App.4th at p. 999.) When the Orange County Social Services Agency began investigating Paul's situation, the home was "both dirty and unsanitary," but the juvenile court did not remove him from the home. (*Ibid.*) Nine months later, the unsanitary conditions had been corrected, though the home was still "messy and dirty." (*Ibid.*)

Still, the agency "identified several specific hazards. They found a propeller protruding from a boat located outside the house, a lamp socket with a short, and a small child's plastic wading pool in the backyard filled with dirty water. Social workers gave Paul's parents 30 days to remedy these . . . conditions, and it is undisputed the parents did so within 8 days. Even so, social workers returned eight days later to take Paul into custody. They determined that the parents' 'lack of progress in recognizing the dirty condition of the house demonstrate[d] that they were limited by their own ability.'" (*Paul E.*, *supra*, 39 Cal.App.4th at p. 1000.) The agency filed a supplemental petition alleging Paul's parents had failed to comply with their case plan, and the juvenile court sustained the supplemental petition and placed Paul in a foster home. (*Ibid.*)

Paul E. was about a supplemental petition under section 361, which required clear and convincing evidence Paul was in physical danger if he remained in the home. (*Paul E.*, *supra*, 39 Cal.App.4th at p. 1004.) The court did *not* decide whether jurisdiction was appropriate, rather decided—after noting that

Paul “ha[d] not actually suffered any ill effects from his environment”—it was inappropriate to remove the child from the home on the evidence in that record. (*Id.* at pp. 1005-1006.) The court also pointed out the absurdity of Paul’s situation: “The specific hazards which the social service agency identified in April 1995 and which led to Paul’s removal are trivial to the point of being pretextual. A shorted lamp socket could occur in the White House. Motor boats normally have propellers on them. Children’s plastic wading pools do not come with filtration systems, and if they are filled with water for any amount of time the water is going to become dirty. Worse hazards than these may be found on practically every farm in America. If such conditions were sufficient for removal from the home, generations of Americans who grew up on farms and ranches would have spent their childhoods in foster care.” (*Ibid.*)

Mother also relies on *In re Kimberly F.* (1997) 56 Cal.App.4th 519 (*Kimberly*). Kimberly’s mother “lost custody of her two youngest children when . . . social workers found her home to be dirty and unsanitary. By the time of the 18-month review, she was making progress, but not enough, so reunification services were terminated. But in the time between the 18-month review and the scheduled permanency planning hearing, she managed to show that she could keep her home in a sanitary condition. The home was clean and safe.” (*Id.* at pp. 521-522.) The juvenile court denied a modification request under section 388, even though mother’s home “was no longer in an unsanitary and unsafe condition. The worst the social worker could point to was a few extension cords and some general ‘clutter’ of newspapers, books, and clothes-the kind of trivia

which *would* bring the case within the purview of [*Paul E.*]” (*Kimberly, supra*, at pp. 526-527 [emphasis in original].)

Paul E. and *Kimberly* are inapposite. The children here have not been removed from their home. But neither can the sanitation problems that have persisted here for more than 13 years be described as *trivial*. The family’s referrals stretching back to 2004 reflect a pattern: DCFS notified parents about the condition of their home, the parents cleaned up *just enough* to convince DCFS that they learned to provide a safe environment, then the parents allow the condition of the home to deteriorate.

“A parent’s ‘[p]ast conduct may be probative of current conditions’ if there is reason to believe that the conduct will continue.’” (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.) The juvenile court had reason to believe the conduct would continue.

Mother and father attack the jurisdictional findings because they say none of the children here ever suffered any injury from the condition of the home. “There must be proof,” mother correctly says, “that unsanitary conditions in the home were causally linked to a substantial risk of physical harm or illness.” Mother acknowledges the 2009 and 2012 DCFS contacts because of the children’s head lice. But because the children did not have head lice *at the time of the jurisdictional hearing*, mother argues there is no evidence that there was a substantial risk of any serious physical harm. We disagree.

In 2004, the condition of the home caused the children allergic reactions from bug bites. From 2009 to 2012, the children had repeated and persistent head lice.

The dissent focuses on a single cycle of filth and emergency cosmetic cleaning, but the problem here is not a dirty home. The

problem here is deep, persistent neglect that has injured and will continue to injure these children. As we said in *Travis C.*, DCFS's inability to precisely predict exactly *what* harm will come to the children does not defeat jurisdiction; it is sufficient that the parents' choices have created a substantial risk of *some* serious physical harm or illness. (*Travis C.*, *supra*, 13 Cal.App.5th at p. 1226.) The record before us supports the juvenile court's jurisdictional finding regarding the condition of the home.

C. Julian's Behavioral & Emotional Issues

"[W]e need only find substantial evidence to support any one statutory basis for jurisdiction to affirm the juvenile court's jurisdictional finding." (*Travis C.*, *supra*, 13 Cal.App.5th at p. 1224.) However, we generally exercise our discretion to reach the merits of a challenge to a jurisdictional finding if the finding could be prejudicial to a parent in current or future dependency proceedings, or could have other adverse consequences. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.) Because DCFS routinely cites prior dependency findings in later reports, we will entertain the parents' appeal of the juvenile court's findings on count b-3 even though its finding on count b-2 independently supports jurisdiction.

Substantial evidence does not support the juvenile court's decision to sustain count b-3, which was based on the parents' inability or failure to secure adequate behavioral and emotional health services for Julian. Accordingly, we will reverse the juvenile court's jurisdictional finding on count b-3.

Julian's school referred him for mental health treatment in April 2016. Mother and father declined. After Julian's behavioral and emotional health issues escalated, mother consented to treatment in September 2016. This case emanated

from a November 2016 DCFS referral. Before the DCFS referral was initiated, then, Julian was already receiving the same mental health services he was receiving at the time of the jurisdictional hearing.

At the jurisdiction hearing, the juvenile court announced that it was “happy that Julian *is now getting the medical and mental health assistance and care that he needs*. But that didn’t happen for a long time, and I think it probably was the involvement of this court that finally persuaded you to get him the care that he needed. [¶] I think for a period of time, there was a resistance to recognize his issues and to treat the issues. I’m happy that you are beyond that. I’m happy that he *is now getting the care that he needs*, but I do believe that there is sufficient risk if I were to not take jurisdiction, that those services and that medical and mental health support would not continue, so I’m going to sustain [count b-3].”

While mother and father’s profound and persistent denial of Julian’s behavioral and emotional issues and their obstinate resistance to treating those issues deeply disturb us, the trial court determined the services Julian was receiving before DCFS intervened were sufficient. There is evidentiary support neither for the proposition that the juvenile court’s intervention secured that care nor the idea that the services would cease absent a jurisdictional finding. There exists no basis for jurisdiction under count b-3.

The “primary motivating factor in declaring jurisdiction [based on count b-3] appears to have been to offer . . . services. We have no doubt that providing services to assist a family that has acknowledged the need for support certainly was meant to promote the best interests of [Julian] and [his] entire family, but

these good intentions are an insufficient basis upon which to find jurisdiction under section 300” (*In re Isabella F.* (2014) 226 Cal.App.4th 128, 139.)

DISPOSITION

We affirm the juvenile court’s determination that the minors are persons described by section 300, subdivision (b). We reverse that part of the order sustaining count b-3 and remand to the juvenile court with instructions to dismiss that count. We also order the juvenile court to correct the clerical errors on lines 24 and 31 of its March 14, 2017 minute order.

NOT TO BE PUBLISHED.

CHANNEY, J.

I concur:

LUI, J.

ROTHSCHILD, P. J., concurring and dissenting:

I concur in the majority opinion insofar as it reverses the juvenile court's order sustaining the allegations in count b-3. I agree that the record is devoid of substantial evidence that the parents failed to, or were unable to, secure adequate behavioral and emotional health services for Julian. I respectfully dissent, however, from the majority's conclusion that substantial evidence supports the juvenile court's order sustaining count b-2's allegations that the unsanitary conditions of the home put the children at risk of serious physical harm. Accordingly, I would reverse the jurisdictional order in its entirety.

The majority bases its decision on two matters:

(1) more than 12 years ago, in 2004, the dirty condition of the home "caused the children allergic reactions from bug bites" and after several referrals since then, the home continued to be dirty and bug-infested; and (2) the children had persistent head lice.

I disagree that these conditions warranted the assertion of jurisdiction because the children were not at risk of serious physical harm as required by section 300, subdivision (b)(1). The allergic reactions occurred more than 12 years ago and there is no evidence that the children suffered either allergic reactions or bug bites since then. Further, the injuries were relatively minor. Nor is a dirty home or persistent problems with head lice grounds for asserting jurisdiction. The children then—9, 11, 14 and 16 years old—were not babies that were totally dependent on their parents. The children loved their parents and, with the exception of Julian, had no problems. They were healthy, well adjusted, and doing well at school.

A dirty home, without more, does not warrant dependency jurisdiction. (See, e.g., *In re Jeanette S.* (1979) 94 Cal.App.3d

52, 58–59; *In re Susan M.* (1975) 53 Cal.App.3d 300, 306.) The record in this case is devoid of any evidence that the children then suffered any illness or harm because of the condition of the home. Further, any inference that they might suffer such harm in the future is speculation. The only incident where they suffered any injury, and, in any case, not serious injury, occurred over 12 years ago. (See *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717 [physical violence between parents occurring seven years earlier is too remote in time to warrant jurisdiction].)

Nor do the children's bouts with head lice warrant juvenile court intervention. Indeed, the cause of head lice infestations is not related to cleanliness. Nor do they cause disease; they are more of an annoyance, albeit one which can be very difficult to eradicate.¹

The majority also relies on the parents' persistent failure, over a 13-year period, to permanently resolve the issues that kept bringing the family to the attention of DCFS. Although, apparently true, no matter how persistent the problems noted by DCFS, they cannot support jurisdiction unless they pose a danger of serious illness to the children.

Here, the children were healthy, safe, and happy in their home. Indeed, at trial, counsel for the three older children asked the court to dismiss the dirty home allegations. Counsel

¹ A multitude of websites on the internet make it clear that the occurrence of head lice has nothing to do with a person's or a home's cleanliness; although they may cause itching, they do not spread disease. (See, e.g., (1) <https://blogs.webmed.com/all-ears/2010/10/hysteria-over-head-lice.html>, and (2) <https://www.smartlivingnetwork.com/hair-and-skin/b/head-lice-facts-and-fiction/>.)

reminded the court that her clients have no issues in school, no special needs, no medical issues, no psychological issues, and above all, the children feel safe and happy.

For all of these reasons, I would reverse the juvenile court's order in its entirety.

ROTHSCHILD, P. J.