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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

B277424
(Los Angeles County
Super. Ct. No. DK14766)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

LINDSEY C.,

Defendant and Appellant.

APPEAL from findings and an order of the Superior Court of
Los Angeles County. Robin R. Kesler, Judge. Affirmed.

Patti L. Dikes, under appointment by the Court of Appeal, for
Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant
County Counsel, and Stephen D. Watson, Deputy County Counsel, for
Plaintiff and Respondent.

Lindsey C. (father) appeals from jurisdictional findings and a dispositional order removing his daughter, Aaliyah C. (Aaliyah, born Sept. 2011) from his custody and placing her with Renee M. (mother). (Welf. & Inst. Code, § 300, subds. (a), (b) & (j).)¹ He contends that insufficient evidence supports the juvenile court's findings of physical abuse and substance abuse.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Family's Prior Dependency History

This family consists of father, mother, Aaliyah, and Aaliyah's 14-year-old sibling, Elijah C. (Elijah).² In 2006, prior to this case, the Los Angeles County Department of Children and Family Services (DCFS) substantiated an allegation that father physically abused one of Aaliyah's older siblings. The referral was closed after DCFS concluded that it appeared to be a one-time incident of father hitting that child on the arm.

In 2010, DCFS substantiated an allegation of "Sibling at Risk of Abuse" by father and opened a six-month voluntary family maintenance case.

Current Case

On September 17, 2015, DCFS received a referral alleging that father had engaged in a physical altercation with Elijah that resulted in the child sustaining several scratches on his body.

The incident report from the Los Angeles County Sheriff's Department (LASD) reflected that Elijah had said that the altercation began because father believed that Elijah had stolen food. Elijah stated

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

² There are additional older siblings in the family but neither they, nor Elijah, are subjects of this appeal. Elijah is mentioned as necessary.

that father hit him multiple times in the head and body with a closed fist and, when he fell to the ground, father grabbed him by the shirt, causing the shirt to rip and scratches to Elijah's body. Elijah was extremely upset and told LASD that there had been numerous prior incidents of father physically abusing him. The sheriff's deputy noted that there were several fresh scratches on the child's right and left upper chest that looked like they were caused by fingernails, but no visible injuries where Elijah said that he had been punched.

The LASD report further indicated that father said that the incident began because he heard that Elijah had stolen food from one of their roommates. He admitted that he became angry, yelled at Elijah and hit him on his arm with an open hand. According to father, Elijah fell to the floor to try to avoid further punishment and, when he grabbed the boy by the shirt to pull him up, the shirt ripped and the child ran out of the house. Father maintained that he was only trying to discipline the boy, not scratch him.

LASD Detective Reddy told a DCFS social worker that Elijah did not want to live with father and was not a credible witness as to the alleged incident. Detective Reddy also said that there would likely be no charges filed as it appeared that there was no crime, just discipline.

After numerous unsuccessful attempts to locate the family, the social worker was able to interview Elijah, Aaliyah, and mother in October 2015. Neither Elijah nor Aaliyah exhibited any signs of abuse or neglect. Regarding the referral, Elijah explained that he and father were arguing about something that the lady they were staying with had said. Elijah said that he became angry and tried to leave the home, but father grabbed him, pushed him, and caused him to fall backward onto the ground. He said that father then lifted him up by his shirt, which ripped his shirt and scratched his sides; Elijah then informed the social worker that father "socked" him twice. Elijah said that he fell again in the driveway and then ran away from the home.

When asked about substance abuse, Elijah disclosed that father used methamphetamine and that mother had kicked father out of the

home for having a crack pipe when Elijah was nine years old. Elijah added that he did not feel safe around father and did not want to see him.

Aaliyah denied that she had ever been hit; she also reported that she had never seen her siblings being hit.

Mother said that she and the children were staying in various motels and not having contact with father. She denied drug use and all forms of abuse and neglect in the home, as well as the allegation in the referral. Mother said that she was not there when the incident between father and Elijah occurred, but noted that Elijah was always in trouble and that she did not see any marks, scratches, or bruises on the boy. Mother agreed to a safety plan whereby she would prohibit in-person contact between father and the children.

On October 26, 2015, Detective Reddy informed DCFS that father had been arrested over the weekend for solicitation and possible rape/sodomy charges. The detective also stated that father was a user of methamphetamine.

After many attempts to contact father, the social worker spoke with him by telephone on December 31, 2015. He said that he had not been in a position to return DCFS's previous calls, but was now in a sober living home and doing well. When asked about the altercation with Elijah, father acknowledged that a physical altercation had taken place, but he claimed that he did not intentionally hurt the child. He said that he confronted Elijah because he stole from the people that they were staying with. According to father, Elijah was out of control, got in his face, and, at one point, fell to the ground. Father stated that he picked Elijah up by his shirt, and was unsure whether he had accidentally scratched the boy when he did so. He denied ever punching, hitting, or kicking the child; he said that he planned to keep his distance from the family. Father admitted that he was an "addict," but he claimed that he was not a violent man.

In January 2016, father went to DCFS's offices and said that he was still residing in a sober living home and wanted to show he was

clean and sober. He agreed to submit to a drug and alcohol test and the results came back negative for all substances.

In February 2016, father advised DCFS that he was residing with mother and Aaliyah. He submitted to a drug and alcohol test, which again was negative for all substances.

Shortly thereafter, mother told DCFS that she and father had had an argument and that he was no longer staying with them.

Section 300 Petition

On March 3, 2016, DCFS filed a section 300 petition on behalf of Aaliyah alleging that she was at risk of harm. The juvenile court detained Aaliyah from father and placed her with mother.

Jurisdiction/Disposition Report

On April 13, 2016, DCFS reported that father's whereabouts were unknown, that he had not been in contact with DCFS, and that he refused to comply with drug testing. He had not returned the social worker's calls and he had not attempted to arrange a visit with Aaliyah.

When reinterviewed, Aaliyah said that she had not seen father recently, denied that father had ever hit her, and denied knowing what drugs were. Asked if she knew anything about father hitting Elijah, she replied, "Yes, my daddy hit him on his face, arm and pushed him, he fell down on the ground." She added that this was not the first time that father had physically hit Elijah.

Mother reiterated that she was not present during the incident between father and Elijah, acknowledged that Aaliyah had been present during that incident, and denied that father had ever hit Elijah in the past. Regarding father's substance abuse, mother stated that she did not know definitively if he was using drugs, but that she suspected that he was because of his behavior. She said that she would not have allowed him to use drugs in the home, in the children's presence, or while caring for the children. Mother claimed that she did not recall finding a crack pipe when Elijah was nine years old. She also claimed that she was no longer in a relationship with father and did not know where he was currently living.

Last Minute Information Report

On August 16, 2016, DCFS reported that father had just been released after being incarcerated for five months due to a domestic violence incident with mother that had occurred earlier in the year. During an interview with DCFS, father stated after mother had refused to give him money, he “tapped her on [the] face. I think she said I hit her on the arm. She gave a statement regarding the incident and the police came.”

When asked again about the altercation with Elijah, father explained that they were staying with another family when some of their food went missing. He said that although Elijah denied taking the food, he knew the boy was lying because the food’s packaging was in the boy’s backpack. Father said that he grabbed the boy by the shirt and the child fell to the ground, so he grabbed him and told him to get up. According to father, Elijah got up off the ground, threatened to call the police, and left the house. Father noted that Elijah had a history of stealing and accusing people of hitting him.

Regarding substance abuse, father claimed that he last used methamphetamine in early 2014.

Mother told DCFS that she had obtained a restraining order against father.

Jurisdiction and Adjudication

At the August 23, 2016, hearing, father asked that the allegations against him be dismissed. DCFS asked that the allegations be sustained, and Aaliyah’s counsel joined. The juvenile court sustained the section 300 petition pursuant to subdivisions (a), (b) and (j), which alleged that father had “physically abused” Elijah “by repeatedly striking [his] head and body with the father’s fist, causing [Elijah] to fall to the ground. The father struck [Elijah’s] arm with the father’s hand. The father inflicted scratches to [Elijah’s] chest. The father forcefully pushed [Elijah], causing [Elijah] to fall to the ground. The father grabbed [Elijah]. On numerous prior occasions, the father was physically aggressive with [Elijah]. Such physical abuse was excessive

and caused the child unreasonable pain and suffering. The physical abuse of [Elijah] by the father endangers [Aaliyah's] physical health and safety and places [her] at risk of serious physical harm, damage, physical abuse and failure to protect.” In subdivision (b)(2), the petition further alleged that father had “a history of illicit drug use and is a current user of methamphetamine, which renders [him] incapable of providing regular care and supervision of the child. On prior occasions in 2016, the father was under the influence of illicit drugs while the child was in the father’s care and supervision. The father has a criminal history of convictions for Transport/Sell Narcotic/Controlled Substance, Possession Narcotic Controlled Substance and Possess Unlawful Paraphernalia. The child is of such young age requiring constant care and supervision and the father’s illicit drug use interferes with providing regular care and supervision of the child. The father’s illicit drug use endangers the child’s physical health and safety and places the child at risk of serious physical harm, damage, danger and failure to protect.”

The juvenile court declared Aaliyah a dependent, removed her from father’s custody, placed her with mother, granted father monitored visits, and ordered services.

Appeal

Father’s timely appeal ensued.

DISCUSSION

Father contends that the juvenile court’s jurisdictional findings are not supported by substantial evidence.

I. Standard of review

As the parties agree, we review the juvenile court’s judgment for substantial evidence. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649.)

II. Relevant law

Section 300, subdivision (a), provides, in relevant part, that the juvenile court may establish jurisdiction over a child when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the

child's parent or guardian. For purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm." (§ 300, subd. (a).) Section 300, subdivision (b)(1), authorizes dependency jurisdiction when the "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, or . . . the inability of the parent or guardian to provide regular care for the child due to the parent's . . . substance abuse." (§ 300, subd. (b).)

Three elements are often cited as necessary for a jurisdictional finding under section 300, subdivision (b)(1): "(1) neglectful conduct by the parent 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 Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

A child is described by section 300, subdivision (j), when "[t]he child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions." (§ 300, subd. (j).)

III. *Analysis*

A. Physical Abuse Allegations

Father claims that the evidence fails to support the physical abuse allegations under subdivisions (a), (b), and (j). But the record shows that on September 17, 2015, father engaged in a physical altercation with Elijah. Elijah said that the incident began when father yelled at him over stealing food. According to Elijah, when he tried to leave the home, father grabbed him, hit him multiple times in the head and body with a closed fist, pushed him, and caused him to fall to the ground. Then, when father tried to pull him up by grabbing his shirt, the shirt ripped and he sustained scratches to his body. Elijah was able to get up and

run away from the home, but not before father had “socked” him two more times. The sheriff’s deputy who responded to the incident observed several fresh scratches on Elijah’s right and left upper chest that looked like they had been caused by fingernails.

Although he recounts the details differently, father did admit that he hit Elijah and that when he tried to pull him up, he caused the shirt to rip; he was unsure whether he had accidentally scratched the boy.

Aaliyah was present during the altercation and, based upon her statement to the social worker, was aware of what was happening.

These facts are sufficient to support jurisdiction under section 300, subdivisions (a) and (b). Elijah certainly suffered physical abuse by father. And, Aaliyah was unquestionably at risk of suffering serious physical harm by being present while father grabbed Elijah, hit him repeatedly with a closed fist, pushed him to the ground, and tried to yank him back up. She could have wandered too close and been hit. Thus, she is a child described by these subdivisions. (See *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598–599; *In re Heather A.* (1996) 52 Cal.App.4th 183, 193–194 [noting that a child is at risk in a home with domestic violence because he or she “could wander into the room where it [is] occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg, or by [someone] falling against them”].)

In urging us to reverse, father characterizes the September 17, 2015, incident differently, claiming that Elijah’s injuries, which were only scratches, occurred accidentally, the course of disciplining his son. He also claims that Elijah is not a credible witness. As noted above, we review the juvenile court’s findings for substantial evidence. In so doing, we examine the record in the light most favorable to the juvenile court and defer to the lower court on issues of credibility of evidence and witnesses. (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1427.) The juvenile court’s order must be upheld if there is any substantial evidence, contradicted or uncontradicted, that supports it, resolving all conflicts in support of the determination and indulging all legitimate inferences in favor of the order. (*In re John V.* (1992) 5 Cal.App.4th

1201, 1212.) In light of this well-established appellate practice, father offers no basis for reversal. While he describes Elijah as not credible, and while he provides an alternate explanation of what occurred on September 17, 2015, those arguments do not allow us to reverse the juvenile court's findings.

In re Isabella F. (2014) 226 Cal.App.4th 128 does not compel a different result for the simple reason that father's behavior on September 17, 2015, was "part of [a] larger pattern of physical abuse." (*Id.* at p. 139; see also *In re N.M.* (2011) 197 Cal.App.4th 159, 162–163, 169.) Elijah disclosed that father had physically abused him on numerous prior occasions, and Aaliyah told DCFS that the September 17, 2015, incident was not the first time father had hit Elijah. In addition, there was a substantiated referral in 2006 that father had physically abused one of Aaliyah's older siblings and a substantiated referral in 2010 that alleged "Sibling Risk of Abuse" by father. In October 2015, father was arrested for solicitation and possible rape/sodomy charges, and while this case was pending, father was incarcerated for five months for perpetrating domestic violence on mother.

For the same reasons, ample evidence supports the juvenile court's finding under section 300, subdivision (j). Father abused Elijah and, considering father's longstanding and ongoing pattern of violent conduct, Aaliyah is at risk of being abused.

B. Substance Abuse Allegation

Father claims that the juvenile court's finding that his drug use posed a risk of harm to Aaliyah is not supported by substantial evidence. Because we could affirm jurisdiction over Aaliyah if any one of the statutory bases for jurisdiction is supported by substantial evidence, we need not address this argument. (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

For the sake of completeness, we note the following:

Father has a long history of drug abuse, including criminal convictions relating to drugs. In December 2015, father admitted to DCFS that he was an “addict” and was living in a sober living house. But, by April 2016, father’s whereabouts were unknown, he refused to comply with drug testing, and he was no longer living in a sober living facility. Given Aaliyah’s young age, father’s drug use poses an inherent risk of harm to her. (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1384; *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.)

C. Disposition

Father contends that because the jurisdictional findings are not supported by substantial evidence, the disposition order must be reversed. As set forth above, the jurisdictional findings were amply supported. Thus, the disposition order stands.

DISPOSITION

The juvenile court’s findings and order are affirmed.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
HOFFSTADT

_____, J.*
GOODMAN

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