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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re D.P. et al., Persons Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

I.P.,

Defendant and Appellant.

B231161

(Los Angeles County
Super. Ct. No. CK83641)

APPEAL from an order of the Superior Court of Los Angeles County,
Zeke Zeidler, Judge. Affirmed.

Kimberly A. Knill, under appointment by the Court of Appeal, for Defendant and
Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County
Counsel, and Kim Nemoy, Principal Deputy County Counsel for Respondent.

I.P. appeals from a dependency court order declaring four of her children dependents of the juvenile court under Welfare and Institutions Code section 300, subdivisions (a), (b), (f) and (j).¹ Mother challenges the sufficiency of the evidence to sustain the petition under section 300, subdivision (f), which related to a fatal fire. She contends that dependency jurisdiction was not supported on the other grounds sustained by the court because they had been the subject of an earlier voluntary family maintenance agreement rather than a dependency petition.

We conclude that dependency jurisdiction was warranted and supported by substantial evidence on several grounds independent of those related to the fatal fire. On that basis, we need not, and do not, address mother's arguments that jurisdiction was not properly based on the fire.

FACTUAL AND PROCEDURAL SUMMARY

Mother had seven children, including Ronald (now an adult) and twin boys (Erik and Edward), who died in the fire that is the basis for some of the juvenile court's jurisdictional findings under Welfare and Institutions Code section 300.² This appeal concerns her other four children, daughter D.P. (born September 25, 2003), daughter J.P. (born in September 2005), son J.P.-V. (born in July 2008) and son D.G.-P. (born October in 2010).³

The family had an extensive history with the Department of Children and Family Services (the Department) beginning in 2001. It included 2001 proceedings which substantiated allegations of emotional abuse by mother, and a May 2010 voluntary family maintenance case based on substantiated domestic violence between mother and her then

¹ The fathers of the children are not parties to this appeal.

² Statutory references are to the Welfare and Institutions Code.

³ D.G.-P. was born after this dependency action was initiated and was the subject of a separate section 300 petition based on the same allegations.

live-in boyfriend, Christian G. Christian moved out at that point, but continued to visit. While the last matter was still pending, in August 2010, a fire occurred at the family apartment. Mother, the three youngest children and a great-uncle were able to escape, but the fifteen-year-old twins, Erik and Edward, died in the fire. A referral to the Department was made immediately after the fire. Mother told a social worker that she lit a candle in a tray with water in it. The tray was placed on top of the dresser in the twins' bedroom at Edward's request. Mother also stated that she kept candles in the home. She checked on the boys early in the morning and the candle was nearly out. She asked if she should put it out but one of the twins said it was not necessary since it was almost out. Mother left it burning.

Mother denied using corporal punishment on the children. A psychiatric social worker interviewed D.P. and J.P. They told her that mother had used the candles in a ritual in which she placed lemon, salt and chili on candles she placed in the twins' room on top of a small dresser, and in other places in the home. The children said mother did this to bring back her boyfriend. The children reported that mother used a belt and a hanger to physically discipline them and had warned that they would be whipped if they told anyone.

After these revelations, the clinical social worker questioned the girls, who were terrified about the fire and had heard the twins coughing and gasping for air. D.P. repeated that mother kept "four or three" candles inside the twins' bedroom, adding that mother put chili, salt and lemon onto the candles "like a witch'." The child asked the social worker to promise that this information would not be shared with mother because mother was "gonna whoop us'." Sister J.P. said "yeah" and nodded her head in agreement and also said that she had seen mother put the water, lemon and chili mixture onto the candles. Both girls (who refused to be separated) reported physical abuse by mother with a shoe, a belt and a clothes hanger but were unable to describe the frequency of these events. D.P. said mother slapped her, J.P. and the twins on the face with an open palm leaving red marks. The girls said they were only frightened of mother when she got mad, and that they felt protected by mother.

The Los Angeles police detective investigating the situation told the social worker that mother was using the candles in practicing witchcraft to force Christian, the father of her unborn child (D.G.-P.), to return to her. The coroner's preliminary investigation reported that the fire did not appear to have been caused by foul play and that "[a] lit candle on a dresser might have started the fire." The coroner determined that the cause of death of both victims was smoke inhalation. The fire department conducted an investigation and was unable to determine the cause of the fire, indicating both a candle and electrical issues in the area of origin. No paraffin residue was found on the dresser on which the candle was placed in the twins' bedroom. The fire was listed as of undetermined origin, although the fire investigator stated it was probable the lighted candle caused the fire.

The Department filed a petition under section 300, subdivisions (a), (b), (f) and (j) alleging that D.P., J.P. and J.P.-V. came within the jurisdiction of the juvenile court. The petition alleged mother had physically abused D.P., J.P. and the twins, placing all of them at risk of harm. It also alleged that mother and her male companion had engaged in a violent altercation in April 2010 when mother was five months pregnant (with D.G.-P.). The Department also alleged that mother had failed to protect the children by frequently burning numerous candles throughout the home, resulting in the fatal fire. It was alleged that mother has mental and emotional problems which render her unable to care for the children since she failed to take psychotropic medications as prescribed. Mother also allegedly allowed her boyfriend to be under the influence of alcohol and illicit drugs in the presence of the children. D.P. and J.P.-V. were detained the same day and J.P. was released into the custody of her father. D.P.-G. was born on October 27, 2010, detained on November 4th, and a separate petition was filed as to him.

In a later interview, D.P. told a dependency investigator about mother's use of candles in a ritual to get her boyfriend back and about domestic violence between mother and the boyfriend. D.P. said that mother kept the candles on a chest of drawers in a closet with a sliding door in the twins' room. D.P. denied that mother put chili, lemon and salt on the candles as part of a ritual. She said there were clothes hanging over and

next to the candles in the closet. D.P. described physical abuse by mother and said the twins were also abused. She also said that mother's boyfriend, Christian, had hit the children with belts. She described Christian as smoking marijuana. Based on some of the child's statements, the Department expressed a concern that mother was discussing the case with the children during monitored visitation. An amended petition was filed October 12, 2010.

The jurisdiction/disposition hearing was held on January 5, 2011. Mother submitted on the social worker's reports. As to D.P., J.P. and J.P.-V., the juvenile court sustained some of the allegations under section 300, subdivisions (a), (b), (f) and (j). As to D.G.-P., allegations were sustained under section 300, subdivisions (b), (f) and (j). The court found by clear and convincing evidence that substantial danger exists to the children's physical or mental health and that the Department provided reasonable services to prevent removal to mother. The care, custody and control of the children was removed from mother. D.P. and J.P. were placed in the home of J.P.'s father, and suitable placement was ordered for the boys, J.P.-V. and D.G.-P., with a study to determine whether they could be placed with the girls. Reunification services and visitation were ordered. This timely appeal followed.

DISCUSSION

I

Mother challenges the sufficiency of the evidence supporting the court's jurisdictional order. The Department must establish by a preponderance of the evidence that the allegations under section 300 are true. (*In re S.O.* (2002) 103 Cal.App.4th 453, 461.) We apply the substantial evidence test, viewing the evidence in the light most favorable to the juvenile court's order. (*Ibid*; *In re Y.G.* (2009) 175 Cal.App.4th 109, 112.)

Mother challenges only the evidence regarding the fire and does not address the alternative grounds on which the petition was sustained. Her argument is that the allegations other than those related to the fire were the basis of the May 2010 voluntary

family maintenance case and “had *not been sufficient* for DCFS to file a petition regarding these children before the fire occurred. Therefore, as referred to in section 300, . . . voluntary services would have been sufficient to assist this family, but for the fire.” Mother concludes that the case therefore “pivots” on the cause of the fatal fire and whether it establishes a basis for dependency jurisdiction. She contends there was no current risk of harm to the children. Mother cites no authority for the proposition that dependency jurisdiction may not be based upon conditions cited in an open voluntary family maintenance case and we have found none.

The juvenile court sustained the amended petition based on evidence of mother’s infliction of inappropriate physical discipline on D.P. and J.P.; her failure to protect the children, as evidenced by the fatal fire; her emotional problems and failure to take prescribed psychotropic medication; a physical altercation between mother and her boyfriend Christian; mother’s creation of an endangering home environment because Christian was allowed to be under the influence of alcohol and marijuana in the home in the presence of the children; and mother’s conduct in allowing Christian to inappropriately physically discipline D.P. and J.P.

The record reflects that the May 2010 referral concerned domestic violence between mother and boyfriend Christian and emotional abuse of D.P., J.P. and J.P.-V. In an interview with a social worker at the time, mother denied domestic violence, but admitted she had gone to the hospital after Christian hit her, although she thought the blow was accidental. Mother also admitted Christian came home drunk or under the influence of marijuana, but denied that he used drugs in front of the children. Mother’s failure to continue prescribed psychotropic medications also was discussed.

As the Department argues, dependency jurisdiction is appropriate where substantial evidence supports at least one jurisdictional finding, even if there are other findings which are not supported by substantial evidence. (*In re Ashley B.* (2011) 202 Cal.App.4th 968, 979 (*Ashley B.*); *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875–876.) In *Ashley B.*, a mother challenged a jurisdictional order on only one of the three allegations sustained by the juvenile court. Since the mother did not challenge all the

jurisdictional findings, the court did not consider her challenge to the single finding and sustained the petition under section 300, subdivision (j). It reasoned, “[a]s set forth in *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451: ‘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 juvenile 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. [Citations.]’” (*Ashley B.*, at p. 979.)

We find ample evidence supporting the jurisdictional findings independent from those stemming from the fire. Both D.P. and J.P. repeatedly told social workers that mother hit them with belts, shoes and hangers. This evidence is sufficient to support jurisdiction under section 300, subdivision (a). “Section 300, subdivision (a), provides that jurisdiction may be assumed if the child has suffered, or there is a substantial risk the child will suffer, serious physical harm inflicted nonaccidentally by the child’s parent. The court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. [Citations.] The court may consider past events in deciding whether a child presently needs the court’s protection. [Citations.]” (*In re N.M.* (2011) 197 Cal.App.4th 159, 165–166, fn. omitted.) Jurisdiction under section 300, subdivision (a) was affirmed in *In re N.M.*, *supra*, 197 Cal.App.4th at p. 169 where the record reflected that the parent had hit the child numerous times, including slapping her on the face with an open hand.

The jurisdictional findings regarding mother’s failure to protect the children under section 300, subdivision (b) were based in part on this evidence of inappropriate physical discipline by mother and are supported by the same evidence. (*In re B.T.* (2011) 193 Cal.App.4th 685, 692 [“The three elements for jurisdiction under section 300, subdivision (b) are: “(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 serious physical harm in the future (e.g. evidence showing a substantial

risk that past physical harm will reoccur).’ [Citations.]”.) Other allegations sustained under section 300, subdivision (b) were based on substantial evidence provided by J.P. and D.P. that mother allowed Christian to be under the influence of alcohol and marijuana and to inappropriately physically discipline the children, mother’s admission that she had stopped her psychotropic medication, and substantiated domestic violence between mother and Christian. In addition, the apartment manager told fire department investigators that she had initiated eviction proceedings because of Christian’s use of marijuana and alcohol on the premises.

Jurisdiction was also warranted under section 300, subdivision (j), which provides that a child may be adjudged dependent if a sibling has been abused or neglected as defined in subdivisions (a), (b), (d), (e) or (i) and there is a substantial risk that the child will be abused or neglected under those subdivisions. (*In re Rubisela E.* (2000) 85 Cal.App.4th 177, 197.) As we have discussed, substantial evidence supports the court’s findings that the children fell within subdivisions (a) and (b). Mother’s failure to accept that her discipline of the girls was inappropriate together with her failure to protect the children from Christian’s physical abuse and alcohol and marijuana use, established that the children remained at substantial risk of abuse or neglect, supporting the finding that jurisdiction under subdivision (j) was proper.

In light of our conclusion that substantial evidence supports multiple grounds for dependency jurisdiction independent of the issues regarding the fire, we need not address the issues raised by mother regarding the causal nexus between mother’s conduct and the fire.

DISPOSITION

The jurisdictional order is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

SUZUKAWA, J.