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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re ROBERT F. et al.,
Persons Coming Under the
Juvenile Court Law.

B289348
(Los Angeles County
Super. Ct. No.
18CCJP00437 A-B)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

J. L.-F.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Stephen C. Marpet, Commissioner. Affirmed.

Lori Siegel, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

J. L.-F. (mother) appeals from the juvenile court's orders taking jurisdiction over Robert F. and Reyna F. under Welfare and Institutions Code¹ section 300, subdivisions (a) and (b); removing the children from her custody; and granting monitored visitation. We affirm.

II. BACKGROUND

On January 23, 2018, the Los Angeles County Department of Children and Family Services (Department) filed a section 300 petition that alleged that six-year-old Robert and two-year-old Reyna came within the juvenile court's jurisdiction due to a history of violent altercations between mother and father, M. F., and father's substance abuse.² The petition alleged that mother

¹ All statutory citations are to the Welfare and Institutions Code.

² The a-1 and b-1 counts alleged:
"The children, Robert F[.] and Reyna F[.]'s mother, J[.] L[.] F[.], and the children's father, M[.] F[.], have a history of engaging in violent altercations. On 11/04/17, in the presence of

the children, the father jumped on the mother's back and took the mother's cell phone in an attempt to prevent the mother from speaking with law enforcement. The father threw the mother's phone, causing the phone to break. On 06/13/17, the father threw beer on a window of the children's home and attempted to get into the home. On 05/25/17, the father threw a chair at a window of the children's home and threatened to break a window in an attempt to get into the home. On a prior occasion in 2011, when the mother was pregnant with the child Robert, the father repeatedly slapped the mother's face and kicked the mother's thighs. The father squeezed the mother's head and repeatedly struck the mother's head with the father's fists. The father placed the father's foot on the mother's throat, choking the mother and causing the mother difficulty breathing. The father wrapped a blanket around the mother's head and neck, causing the mother difficulty breathing. The father has a history of a criminal conviction of Inflict Corporal Injury to Spouse/Cohabitant for the father's violence against the mother. The mother failed to protect the children in that she allowed the father to frequent the children's home and to have unlimited access to the children. Remedial Services failed to resolve the family problems in that the parents continue to engage in violent altercations. Such violent conduct on the part of the father against the mother, and the mother's failure to protect the children, endangers the children's physical health and safety, and places the children at risk of serious physical harm, damage, danger and failure to protect."

The b-2 count alleged:

"The children, Robert F[.] and Reyna F[.]s mother, J[.] L[.] F[.], and the children's father, M[.] F[.], has a history of substance abuse, and is a current abuser of alcohol, which renders the father incapable of providing regular care for the children. Further, on prior occasions in 2017, the father had positive toxicology screens for marijuana. On prior occasions, the father was under the influence of alcohol while the children were

failed to protect the children in that she allowed father to frequent the children's home and have unlimited access to them.

In its January 24, 2018, Detention Report, the Department stated that mother and father were married, but had been separated for two years and lived in separate residences. Mother was reported to have a busy schedule with her job and attending college. She was able to manage Robert's school schedule and extracurricular activities and Reyna's daycare, but needed father's help raising and caring for the children.

The Department reported that on April 30, 2011, father inflicted physical injury on mother—slapping, punching, kicking, and choking her—while mother was pregnant with Robert resulting in father's conviction for spousal abuse and incarceration in prison for four years.

Mother and father married while father was in prison. After father's release from prison, he and mother reunified, but separated into two residences due to ongoing altercations.

On October 6, 2016, the Department received a referral concerning a domestic violence incident between mother and father at mother's home that resulted in minor injuries to

in the father's care and supervision. The children are of such a young age, requiring constant care and supervision, and the father's substance abuse interferes with providing regular care and supervision of the children. The children's mother, J[.] L[.]-F[.], failed to protect the children when she knew of the father's substance abuse. The mother allowed the father to frequent the children's home and to have unlimited access to the children. The father's substance abuse, and the mother's failure to protect the children, endangers the children's physical health and safety, and places the children at risk of serious physical harm, damage and failure to protect."

mother. Robert witnessed the incident. The referral was elevated to a voluntary family maintenance case for the period from November 30, 2016, to November 30, 2017.

On November 2, 2016, mother filed a request for a domestic violence restraining order. Mother failed to appear at the hearing on November 22, 2016, and her request was dismissed.

On May 25, 2017, mother called the police requesting help removing father from her property. Father had attempted to enter mother's home and she refused him entry. He had threatened to break a window and had thrown a chair. According to the police, father had slurred speech and watery eyes; he was swaying and verbally aggressive. The police arrested father for resisting/delaying an officer. The children were not present.

Less than a month later, on June 13, 2017, mother again called the police requesting help removing father from her property. Father was belligerent, had thrown a beer at mother's window, and was verbally aggressive toward the police. The police arrested father for public intoxication. The children were not home.

On June 19, 2017, a social worker met with mother and father separately. Mother agreed to obtain a temporary restraining order. Father agreed not to go to mother and the children's home.

In August 2017, father began family preservation services that included individual counseling to address anger management and domestic violence. Mother and father limited their communication only to texts relating to child care. Father discontinued family preservation services in September 2017.

On November 4, 2017, mother called 911 from a McDonald's restaurant and reported that father had forcibly

taken her car keys and was planning to drive away with their children. During the 911 call, father jumped on mother's back, took mother's cell phone, and threw the phone into the air. Father was arrested for taking a cell phone during a 911 call. The children were present during the incident.

On November 15, 2017, the social worker interviewed mother. Mother stated that she had not obtained a restraining order against father because it would prevent him from helping her with the children.

On November 28, 2017, the social worker interviewed Robert about mother and father's domestic violence. Robert stated that he had never gotten hurt when mother and father argued.

At the January 24, 2018, detention hearing, the juvenile court found a prima facie case for detaining Robert and Reyna. In ordering the children detained from mother and father, the juvenile court noted that there had been four instances of domestic violence beginning in 2016 even though mother and father were not living together, three of which occurred after the voluntary family maintenance case was initiated. The court ordered monitored visits for mother and father and weekly random drug and alcohol testing for father. The children were placed with paternal grandmother.

On March 7, 2018, a dependency investigator interviewed father. Father admitted that he and mother had a history of violent altercations. In discussing the November 4, 2017, incident, father stated he hugged mother from behind trying to calm her. They were at McDonald's and he believed the parents of older children were not supervising their children around his daughter. Mother called father a "bully." Father "snatched" the

car keys from mother's hand, "grabbed" the children, and told mother to come with them. Mother did not want to go with them. Father admitted grabbing and throwing mother's phone in the air.

Father denied the June 13, 2017, incident. As for the May 25, 2017, incident, father said he went to mother's house to help her get the children ready for school. Mother was angry because she had called father the night before and he had not responded. Father "grabbed" a chair and moved it. Mother called the police and falsely told them father had been drinking. The police pepper-sprayed and beat father. On his lawyer's recommendation, father "[took] the deal."

Regarding the 2011 incident that resulted in his conviction and incarceration, father admitted he slapped and pushed mother. He denied, however, that he kicked, hit, or choked her. After his release from prison, he participated in classes for a year. Since 2011, he and mother "only had arguments, nothing physical. She gets upset and calls pd."

On March 8, 2018, the dependency investigator interviewed mother. Mother denied that she failed to protect the children. As for the November 4, 2017, incident, mother said that father had "hugged me from behind," but acknowledged that he had broken her phone. She called the police because father wanted her to leave with him. Father had been arguing with people at the McDonald's.

Regarding the June 13, 2017, incident, mother said father and Robert's soccer coach were drinking beer at their house, so she left and took the children hiking. When mother returned, father tried to be romantic and joke and "threw a beer at the

window in a playful manner.” The window was open. Father was drunk and mother called the police.

As for the May 25, 2017, incident, mother denied father threw a chair. She believed father was having a seizure, so she called the paramedics. The police responded and threatened to shoot father. Mother did not feel that father was threatening her.

As for the April 30, 2011, incident that led to father’s conviction and incarceration, mother said, “Yes, he slapped me. I went to the hospital and they said I had a busted ear drum. He never tried to choke me and he never kicked me.” She married father while he was in prison. Father “swore on a bible he would change.”

Mother stated that she never allowed father to care for the children if he was drunk. If she knew he was drinking, she would have a relative care for the children. Mother said father had not drank alcohol in six months.

Since September 2017, mother had attended 17 sessions of individual therapy. Mother had been enrolled in a domestic violence case management program since July 2017.

On March 15, 2018, the dependency investigator interviewed Robert. Robert said his parents always got along well and never argued. He could not remember a time when they did not get along. They were always happy. His family did not need help with anything. Robert denied that the police had come to his home or to the McDonald’s. He did not remember the McDonald’s incident. Father sometimes spent the night. He wanted to return to mother’s home.

At the jurisdiction hearing, the juvenile court sustained the section 300 petition. It ordered the children removed from

mother and father and granted mother and father monitored visitation.

III. DISCUSSION

A. *Jurisdiction Order*

“In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.’ [Citations.]” (*In re R.T.* (2017) 3 Cal.5th 622, 633.)³

Under subdivision (a) of section 300, the juvenile court has jurisdiction over a child if “[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.” (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598-599 [jurisdiction under section 300, subdivision (a) “is

³ Although mother fails to challenge the juvenile court’s jurisdictional findings as to father (see *In re I.A.* (2011) 201 Cal.App.4th 1484, 1489-1492 [a minor is a dependent under section 300 if any jurisdictional allegation is supported as to either parent]), we exercise our discretion to consider mother’s challenge to the jurisdictional findings as to her because they served as the basis for the dispositional order that mother also challenges on appeal (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763).

appropriate when, through exposure to a parent's domestic violence, a child suffers, or is at substantial risk of suffering, serious physical harm inflicted nonaccidentally by the parent"].)

A child comes within the jurisdiction of the juvenile court under section 300, subdivision (b) when "[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." (*In re R.C.* (2012) 210 Cal.App.4th 930, 941 ["Exposure to domestic violence may serve as the basis of a jurisdictional finding under section 300, subdivision (b)"].)

Mother contends that the evidence does not show that she would non-accidentally expose the children to father's violent conduct. Instead, mother contends, the record shows that she and father had been living apart for two years at the time of the November 4, 2017, incident; she intended to divorce father; and she attempted to leave with the children when father became "agitated" at the McDonald's, called the police when father took her keys, and attempted to leave with the children. Moreover, mother argues, she had been making progress in the voluntary family maintenance case. Mother called the police in response to the May 25, and June 3, 2017, incidents.

Despite a significant history of domestic violence by father, mother continued to interact with him in the children's presence. Those interactions have devolved into situations that placed the children at risk of harm, as when father took mother's car keys at the McDonald's and attempted to leave with the children and then jumped on mother's back and took and threw mother's cell phone when she tried to call the police. When confronted with father's problematic behavior, mother appropriately called the

police. Nonetheless and despite mother's recognition that father engages in behavior that requires police intervention when he is around her—behavior that endangers the children—mother continues to allow father to be in her presence. That cycle has continued even though mother and father participated in services in the voluntary family maintenance case. Accordingly, sufficient evidence supports the jurisdiction order under section 300, subdivision (b) based on mother's failure to protect the children from father's domestic violence.⁴

B. *Disposition Order*

Under section 361, subdivision (c)(1), a juvenile court may remove a dependent child from a parent's custody when it finds clear and convincing evidence that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the

⁴ Because we hold that sufficient evidence supports jurisdiction under section 300, subdivision (b), we need not decide whether there was jurisdiction under section 300, subdivision (a). (*In re Drake M.*, *supra*, 211 Cal.App.4th at p. 762 ["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 [trial] 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."].) [Citation.]"].)

minor from the minor's parent's . . . physical custody.” Jurisdictional findings are prima facie evidence that a minor cannot safely remain in the home. (*In re T.V.* (2013) 217 Cal.App.4th 126, 135.)

We review the court's disposition finding for substantial evidence. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 529.) Because the trial court's finding must itself be made on clear and convincing evidence, some appellate courts have stated that, in determining whether substantial evidence exists, we must determine if there was substantial evidence of the existence of clear and convincing proof. (E.g., *In re Basilio T.* (1992) 4 Cal.App.4th 155, 170.) Other courts disagree, on the following reasoning: ““The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal.” [Citation.] Thus, on appeal from a judgment required to be based upon clear and convincing evidence, the clear and convincing test disappears and ‘the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.’ [Citation.]” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1525-1526.) We need not take a position on this dispute, because the evidence was sufficient in this case under either measure.

Mother contends there was not clear and convincing evidence of the need to remove the children from her custody because she was the victim of father's domestic violence, she had not lived with father for more than two years, she sought police protection when father presented a threat, she sought the

Department's help in moving to a residence where father could not find her, she sought a restraining order, and she was fully compliant with programs and orders the Department and juvenile court suggested. Moreover, mother argues, the juvenile court did not consider alternatives to removal "such as assisting Mother with relocation and or a shelter for protection, making unannounced home visits to ensure Father was not present, in-home parenting, counseling services, domestic violence for victim's services, and ordering Father to not have any contact with Mother or the children outside of [Department] monitored visits."

Substantial evidence supported the disposition order for the same reasons that the evidence supported the jurisdiction order. Mother and father have been engaged in a cycle of domestic violence that endangers the children and from which mother is apparently unable to break free. The clearest example of this is mother's reluctance to obtain a restraining order to keep father away from her. In connection with the October 6, 2016, incident, mother filed a request for a domestic violence restraining order, only to fail to attend the hearing on the request. After the May 25, and June 13, 2017, incidents, mother spoke with a social worker and agreed to obtain a temporary restraining order. Mother later explained to the social worker that she had not obtained a restraining order against father because it would have prevented him from helping her with the children.

Later, at the jurisdiction hearing, mother requested a restraining order that prohibited father from stalking or harassing her. When the juvenile court stated that it was granting a temporary restraining order that would require father

to stay 100 yards away from mother and to have no communication with her, mother's counsel demurred, stating that mother had requested the temporary restraining order to "allow the court to feel better about releasing the children . . . to her" and mother felt that limiting it to harassment and stalking would be sufficient as father had not contacted her. The juvenile court responded, "That's exactly the wrong—that's exactly why I should detain the children. You just don't get it. [¶] . . . [¶] You still don't want him to harass you but you want to have contact with him and be involved with him."

The juvenile court's finding that mother failed to appreciate the substantial danger she placed her children in by continuing to have contact with father was supported by substantial evidence. In light of mother's refusal to break off contact with father—a refusal that continued up to the jurisdiction hearing—there were no reasonable means to protect the children's safety without removing them from mother's custody.

C. *Visitation Order*

Section 362.1, subdivision (a)(1)(B) provides in part, "No visitation order shall jeopardize the safety of the child." We review the terms of a visitation order for an abuse of discretion. (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1356.)

Mother contends the juvenile court abused its discretion by ordering monitored visits because she did not pose a risk to her children's safety. Mother argues that she only sought father's assistance in caring for the children when necessary and there was no reason to believe she would use father as a caregiver after the Department and the juvenile court informed her that father

was unsuitable. We disagree. Given that mother continued to have contact with father and thereby expose the children to father's potential for domestic violence, even during the voluntary family maintenance case, the juvenile court did not abuse its discretion in ordering that mother's visitation be monitored.

IV. DISPOSITION

The orders are affirmed.

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KIM, J.

We concur:

RUBIN, P. J.

MOOR, J.