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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

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

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

TONY L.,

Defendant and Appellant.

B295802

(Los Angeles County
Super. Ct. No. 18CCJP04911A-
B)

APPEAL from orders of the Superior Court of Los Angeles
County, D. Zeke Zeidler, Judge. Affirmed.

Emery El Habiby, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel and William D. Thetford, Principal
Deputy County Counsel for Plaintiff and Respondent.

Tony L. (father) challenges orders of the juvenile court asserting dependency jurisdiction over his children and requiring him to participate in counseling as a condition of reunifying with the children. Father also challenges a domestic violence restraining order requiring father to avoid contact with the children's mother, C.W. (mother). We find no abuse of discretion, and thus we affirm.

I.

Detention

A. Background

Father and mother are the parents of Tony Z.L. (Tony) (born in March 2016) and A.L. (born in October 2017).

In September 2017, the Los Angeles County Department of Children and Family Services (DCFS) received a report that father had pushed mother to the ground when she attempted to leave their apartment during an argument. Mother, who was then pregnant with A.L., was taken to the hospital, where she and the baby were determined to be fine. Mother said she did not want to press charges, and DCFS deemed the allegations unfounded.

B. July 5 Referral

On July 5, 2018, DCFS received an anonymous report that Tony and A.L. were frequently heard crying, and the adults in the house responded by yelling at the children and calling them names. DCFS responded to the referral address, which was the paternal grandmother's home, and spoke to father. Father said Tony had autism spectrum disorder and ADHD, and he agreed that the children cried frequently. He admitted having told the children he hated them. Father reported that he had been diagnosed with paranoid schizophrenia and bipolar disorder, for

which he took medication daily. He had experienced auditory hallucinations in the past, but he no longer did so. Father admitted that he currently used alcohol and marijuana, and said he had used cocaine and PCP in the past. Father denied any incidents of domestic violence with mother.

The paternal grandmother said she had heard father tell the children he hated them, but she denied ever seeing him hit them. A neighbor said he had heard father say, “stop crying, bitch” and “I hate you all” to the children. When the neighbor told father it was not right to speak to children that way, father told him to “shut up.”

C. July 9 Referral

On July 9, 2018, A.L. was taken by ambulance to the hospital for possible dehydration. Mother told a hospital social worker as follows:

Mother learned she was pregnant with her third child in February 2018. Father became upset because he thought the child was not his. He hit mother in the face and held a box cutter to her throat, threatening to kill her. Father then kicked mother and the children out of the home. Mother and the children stayed with the maternal aunt for two weeks, during which time mother was treated for a deviated septum. Mother and the children then returned home.

The incident that brought A.L. to the hospital began on Tuesday, July 3. Mother put the children down for a nap and then visited with a neighbor. When she returned to the family’s apartment, the doors were locked, and father and the children were gone. Mother was not able to reach father by phone until the next day, Wednesday, July 4. He agreed to meet mother so she could breastfeed the children, but then he kicked her out of

his car and left with the children. He kept the children until Friday, July 6, when he returned them to mother. He came home drunk late that night, and the following day appeared to be off his medication. A.L. had refused fluids since father brought him home and was not urinating, so mother told father she wanted to take the child to the hospital. Father refused, took mother's purse and keys, threatened to beat her, and locked her out of the house. Mother asked a neighbor to call the police, and the children were transported by ambulance to the hospital, where A.L. was determined to be adequately hydrated.

Mother said father suffered from schizophrenia and bipolar disorder. She said he could be a good father when he took his psychotropic medication, but she believed he had not been taking it regularly. Mother had heard father call two-year-old Tony "a 'faggot'" and say he hated him. Father had threatened to harm the baby mother was carrying and had said he hoped the child would die. Mother had not contacted law enforcement because she feared they would take her children.

Father denied threatening mother or getting upset because she wanted to take A.L. to the doctor. He characterized mother as "a habitual liar."

On July 11, mother and the children moved out of the family's apartment and into a shelter for victims of domestic violence. The shelter director reported mother took good care of the children and they seemed bonded to her.

On August 6, 2018, the court ordered the children detained from father and released to mother, and granted mother's request for a temporary restraining order against father.

II.

Jurisdiction and Disposition Report

During an interview with a children's social worker (CSW) in August 2018, mother provided additional details regarding the incident in which father threatened her with a box cutter. She said as follows: “‘[H]e (father) got jealous of the kids. He said the kids are inconsiderate of [his] feelings. I told him the baby doesn't know what he means. He said I was defending the kids and at 11 p.m. he said he was going to kill me at 5 a.m., and told me to say my prayers. He kept coming in the room every hour and waving the box cutter around and threatening he was going to kill me. He said he was going to kill me and walk out and leave the kids. At 5 a.m. he came in with a box cutter and gloves on and told me it was time. I was praying and I tried to put my baby to sleep. I got my baby to go to sleep and I walked out and locked the bedroom door. Somehow [Tony] unlocked the door and at this point he [father] had the box cutter to my neck but [Tony] stood in front of him. [Father] told [Tony] to go to his room, but he wouldn't go and [Tony] tried to block [father] from me. When [father] told [Tony] to move he wouldn't. [Father] looked up at me and had this evil laugh and said “I see what's happening, God saved you.” Then he walked away.’” Mother did not leave the apartment because father stayed by the front door all day. The next day, father said “‘ya'll should have never came back, and asked me if I was going to leave. Then he said how about I cut one of them (children). Then, he asked [Tony] whether he was ready to bleed. I pretended to hang myself to . . . distract him [away] from my kids. I will do anything to protect my kids. After that I was planning to get away from him.’”

Mother said father smoked marijuana daily, usually at his mother's house. If he did not use marijuana, he experienced withdrawal symptoms and was aggressive and moody. Mother left the children alone with father only when they were asleep, and only to go to the store.

Father's case manager reported that father met with a therapist once per week, and with a psychiatrist every two months. His therapist reported father was engaged and compliant with his treatment, and that she had no concerns about mother's or father's ability to parent the children.

The director of the domestic violence shelter where mother and the children were living reported that mother was bonded to her children, attentive to their needs, and self-aware. Mother's therapist reported that mother was doing well in therapy and was very attentive to her children, especially to her oldest, who had special needs. The therapist did not have concerns about mother's ability to care for the children.

III.

Jurisdiction/Disposition Hearing

At the jurisdiction/disposition hearing on October 22, 2018, the juvenile court sustained allegations pursuant to Welfare and Institutions Code¹ section 300, subdivisions (a) and (b)(1), that mother and father had a history of engaging in violent altercations, and father's violent conduct against mother, and mother's failure to protect the children, placed the children at risk of serious physical harm. The court dismissed allegations that father had a history of mental and emotional problems and

¹ All subsequent statutory references are to the Welfare and Institutions Code.

abused alcohol and drugs. The court ordered the children placed with the parents under DCFS supervision, with their primary residence to be with mother. Mother was ordered to participate in individual counseling and parenting education; father was ordered to submit to weekly on-demand drug and alcohol testing, attend parenting education, participate in individual counseling and psychiatric care, and take all prescribed psychotropic medication. Finally, the court issued a restraining order protecting mother from father and ordered DCFS to create a custody order for the parents.

Father timely appealed from the jurisdictional, dispositional, and restraining orders.

DISCUSSION

Father contends that the evidence did not support the juvenile court's jurisdictional findings, and the trial court abused its discretion by issuing a restraining order and ordering father to participate in therapy.

I.

The Jurisdictional Findings Were Supported by Substantial Evidence

Father contends that evidence does not support the juvenile court's assumption of jurisdiction pursuant to section 300, subdivisions (a) and (b)(1). For the reasons that follow, the claim is without merit.

Section 300 permits the exercise of dependency jurisdiction if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm" either "inflicted nonaccidentally upon the child by the child's parent" or "as a result of the failure or inability of his or her parent or guardian to

adequately supervise or protect the child.” (§ 300, subd. (a), (b)(1).)

When an appellate court reviews a juvenile court’s jurisdictional findings, “it looks to see if substantial evidence, whether contradicted or uncontradicted, supports the findings. [Citations.] The appellate court must review the evidence in the light most favorable to the trial court’s order, drawing every reasonable inference and resolving all conflicts in favor of the prevailing party. [Citation.] Substantial evidence ‘means evidence that is “reasonable, credible and of solid value; it must actually be substantial proof of the essentials that the law requires in a particular case.” ’ ” (*In re Alexander C.* (2017) 18 Cal.App.5th 438, 446.)

Father contends that, as a matter of law, a juvenile court may not find that a child is at substantial risk of suffering serious physical harm if neither the child nor his sibling has ever been nonaccidentally injured by the parents. The claim is without merit. Our Supreme Court has said: “[S]ection 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction. The subdivisions at issue here require only a ‘substantial risk’ that the child will be abused or neglected. The legislatively declared purpose of these provisions ‘is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.’ (§ 300.2, italics added.) ‘The court need not wait until a child is . . . injured to assume jurisdiction and take the steps necessary to protect the

child.’ (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.)” (*In re I.J.* (2013) 56 Cal.4th 766, 773, italics added.)

Father also contends that substantial evidence did not support the juvenile court’s finding that the boys were at substantial risk of future serious physical harm because mother’s “fantastic allegations of domestic violence, while severe, were not corroborated by any physical evidence or eyewitness testimony.” In so contending, father misapprehends our standard of review. “Under the deferential substantial evidence standard of review, findings of fact are liberally construed to support the judgment or order and we consider the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences in support of the findings. [Citation.] ‘A single witness’s testimony may constitute substantial evidence to support a finding. [Citation.] It is not our role as a reviewing court to reweigh the evidence or to assess witness credibility.’” (*Powell v. Tagami* (2018) 26 Cal.App.5th 219, 231.)

In the present case, it is undisputed that father suffers from schizophrenia, which has caused him to suffer auditory hallucinations, and for which he receives treatment. Mother told a social worker that several months earlier, father had threatened to kill her and then entered her room and held a box cutter to her throat. When two-year-old Tony entered the room and stood between mother and father, father initially did not put the box cutter away, but instead told Tony to go back to his room. Father walked away from mother only after concluding that God had intervened to save mother. The next day, father threatened to cut one of the children and asked Tony if he “‘was ready to bleed.’” More recently, father had threatened to beat mother if she sought medical care for A.L.

It is well established the domestic violence between parents, even without more, puts children at risk of serious physical harm. (E.g., *In re E.B.* (2010) 184 Cal.App.4th 568, 576 [“‘[D]omestic violence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.’ [Citation.] Children can be ‘put in a position of physical danger from [spousal] violence’ because, ‘for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg. . . .’”]; *In re Heather A.* (1996) 52 Cal.App.4th 183, 194, overruled on other grounds in *In re R.T.* (2017) 3 Cal.5th 622, 628 [“domestic violence in the same household where children are living *is* neglect; it is a failure to protect [children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it”].) Here, there is evidence not only that father has physically abused mother, but also that Tony witnessed at least one incident of abuse and was in close proximity to his parents while father was holding a knife at mother’s throat. The risk to young children from a violent and volatile encounter of this kind is manifest. Accordingly, this record amply supports the juvenile court’s conclusion that Tony and his infant brother were at substantial risk of serious physical harm.

Father suggests mother’s testimony was not credible because it was uncorroborated and because mother acknowledged domestic violence in past relationships and suffered from depression. But nothing in mother’s history of depression or past abusive relationships logically suggests a present lack of candor, and the juvenile court was not required to credit father’s

characterization of mother as “‘a habitual liar.’” Nor was the lack of corroboration surprising—indeed, as two-year-old Tony and nine-month-old A.L. were preverbal, neither would have been capable of corroborating mother’s account of the incident. In any event, as we have said, we must “‘defer to the juvenile court’s findings of fact and assessment of the credibility of witnesses.’” (*In re L.M.* (2019) 39 Cal.App.5th 898, 914.) We therefore conclude the juvenile court’s findings were supported by substantial evidence.

II.

The Juvenile Court Did Not Err by Issuing a Domestic Violence Restraining Order

Father contends the juvenile court erred in granting a domestic violence restraining order because mother did not present sufficient evidence of abuse. Father failed to raise the issue below, and thus he has forfeited it on appeal. (*In re Marriage of Davila and Mejia* (2018) 29 Cal.App.5th 220, 227.) In any event, for the reasons we have discussed, mother’s claims of domestic violence were supported by substantial evidence. Accordingly, the juvenile court did not err by issuing a domestic violence restraining order.

III.

The Juvenile Court Did Not Abuse Its Discretion by Ordering Father to Participate in Counseling

Father urges that the juvenile court abused its discretion by ordering father to participate in counseling because he was already participating in therapy. We do not agree.

“‘At the dispositional hearing, the [dependency] court must order child welfare services for the minor and the minor’s parents to facilitate reunification of the family. [Citations.] The court

has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accord with this discretion. [Citations.] We cannot reverse the court's determination in this regard absent a clear abuse of discretion. [Citation.]" (*In re Drake M.* (2012) 211 Cal.App.4th 754, 770; see also *In re Briana V.* (2015) 236 Cal.App.4th 297, 311; *In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474.)

In the present case, it is undisputed that father has several serious mental health diagnoses, including schizophrenia and bipolar disorder. In view of father's serious mental illness, requiring him to continue to undergo therapy as a condition of regaining custody of his young children manifestly was not an abuse of discretion.

DISPOSITION

The jurisdictional, dispositional, and restraining orders are affirmed.

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EDMON, P. J.

We concur:

LAVIN, J.

EGERTON, J.