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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Alexander T., a Person
Coming Under the Juvenile
Court Law.

B288088
(Los Angeles County
Super. Ct.
Nos. 17CCJP01466 &
17CCJP01466A)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Appellant,
v.

A.T.,

Defendant and Appellant;

G.T.,

Respondent.

APPEAL from an order of the Superior Court of Los Angeles County, Frank Menetrez, Judge. Affirmed.

Marissa Coffey, Law Office of Marissa Coffey, LLC, by appointment of the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Appellant.

Lisa A. Raneri, Law Office of Lisa A. Raneri, by appointment of the Court of Appeal, for Respondent.

INTRODUCTION

The Los Angeles County Department of Children and Family Services (Department) filed a dependency petition alleging father G. T. (father) physically abused his son Alexander T. (Alexander). Following a contested jurisdictional hearing, the juvenile court dismissed the petition, concluding the Department had not met its burden of proving the alleged abuse occurred. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In February 2016, in a dependency proceeding in Orange County, the juvenile court sustained allegations that Alexander's mother Stacey E. (mother) physically abused and inappropriately disciplined Alexander and his two sisters in violation of Welfare and Institutions Code section 300, subdivision (a).¹ Alexander was detained from mother and released to father. In October

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

2016, the court terminated jurisdiction over Alexander with a family law order giving full physical custody to father, joint legal custody to mother and father, and monitored visits to mother.

On October 27, 2017, the Department received a referral stating Alexander disclosed that father whipped his leg with a phone charger the previous night. According to the referral, Alexander had four to five red linear marks about three to four inches long each on his right thigh. He also had a red bottle cap-sized bruise. The referral stated father told Alexander not to tell anyone that he was hit or father would hit Alexander harder the next time.

The police also received a suspected child abuse report. Officer Dlam reviewed the report and interviewed Alexander at the Boys and Girls Club, where Alexander went after school. Alexander told Officer Dlam that father had spanked him on the buttock with a white phone charging cable for lying about completing his homework. Officer Dlam observed approximately three linear red marks on Alexander's upper right leg that were three to four inches long and a circular red mark approximately one inch in size. Officer Dlam took custody of Alexander and brought him to the police station.

Social worker Danielian interviewed Alexander at the police station. Alexander did not express fear of father. Danielian observed three red linear marks two or three inches long and a bruise on Alexander's right leg. Danielian took custody of Alexander.

Father was very cooperative with Danielian. He stated he only spanked Alexander on the buttocks and did not use any

objects to hit the child.² Danielian observed that Alexander was emotionally attached to father and appeared to feel comfortable around father.

Danielian also spoke with Guy T., Sr., the paternal grandfather (paternal grandfather), who said he had not seen father physically abuse Alexander. Paternal grandfather said Alexander was manipulative and was diagnosed with ADHD but was not taking medication. He said he loved Alexander more than anything and would not let anyone abuse him. Paternal grandfather agreed that father would leave the home while paternal grandfather took care of Alexander.

On October 28, social worker Callum visited the family home and learned that police had arrested father after finding him in the home with Alexander. Callum spoke with Alexander, who denied that father had struck him. Asked how he got the bruises on his legs, Alexander said he did not know and he has a bad memory and sometimes makes up stories. Callum told Alexander he had to be truthful. Alexander then said father hit him on his legs and butt with a cell phone charger as a punishment for lying about finishing his homework. Alexander said this was the first time father had physically disciplined him. According to Alexander, father said that if he told about the hitting he would be hit harder the next time. Alexander said father stayed with him and paternal grandfather the previous night. Alexander stated he feels safe at home.

Paternal grandfather told Callum that father had stayed with a relative the previous night and Alexander was lying when

² Father later denied telling the social worker he hit Alexander. Father said he never used physical punishment on Alexander.

he said father stayed at home. According to paternal grandfather, Alexander made everything up and it was a big misunderstanding.

The Department placed Alexander in a temporary foster home.

On October 30, Callum received the results of Alexander's forensic exam. The examiner found multiple purple loop patterned bruises on Alexander's lower back, buttocks, thighs and hip and concluded the bruises were consistent with being hit with a "charger cord folded in half." Alexander told the examiner that father does not hit him with any objects. He said he lives with father and paternal grandfather, he likes his family, and he is not scared of anyone at home. He said father only hits him with an open hand sometimes. Alexander denied that father hit him with a phone charger and he did not know why he said that. The examiner noted: "Child needs mental health evaluation ASAP."

On October 31, the Department filed a petition alleging father violated section 300, subdivisions (a) and (b)(1), by (1) repeatedly hitting Alexander with a cord and with father's hand, leaving marks and bruises on the child's buttocks, legs, back, and body, and (2) threatening to physically discipline Alexander if he disclosed the abuse.³

At the detention hearing on November 1, the juvenile court detained Alexander from father and ordered monitored visits. On November 16, the court placed Alexander with paternal

³ The petition also included allegations against mother based on the previously sustained dependency petition in Orange County. At the Department's request, the court later dismissed those counts.

grandfather over the Department's objection. The court ordered father not to live in the home and ordered the Department to conduct frequent unannounced home visits.

On December 13, Alexander told a dependency investigator that the marks and bruises on his legs and buttocks resulted from a "really hard" fall "on rocks" at the Boys and Girls Club. The dependency investigator said she had heard father hit Alexander with a cell phone cord. Alexander responded, "Nah, that didn't happen. I lied." The dependency investigator told Alexander it was important to tell the truth. Alexander said, "No, I'm not lying. My dad didn't hit me." He also said he had never been spanked. He wanted to live with father and paternal grandfather.

Alexander's first-grade teacher told the dependency investigator that Alexander "lies a lot," is "very smart," and "has a lot of anger issues." The director of the Boys and Girls Club described Alexander as "very smart and manipulative" and "very good at lying." She wrote: "Alexander would hold onto his lies as long as he could. He didn't flinch."

In its Jurisdiction/Disposition Report, filed December 22, 2017, the Department recommended that the court sustain the petition, grant father reunification services, deny mother reunification services, and grant both parents monitored visitation.

By January 24, 2018, father had attended seven anger management classes and seven parenting classes. He was also participating in individual therapy.

Also on January 24, the dependency investigator learned that Alexander had been kicked out of the Girls and Boys Club

and had made allegations about a staff person at school touching him.

At the adjudication on February 7, the court received exhibits in evidence and heard testimony by paternal grandfather. Paternal grandfather testified, among other things, he had never seen father hit Alexander. He also testified Alexander recently claimed a staff member at his school had molested him, but when the police were called it turned out no molestation had occurred.

Father's counsel asked the court to dismiss the petition, arguing Alexander had lied about father hitting him. Counsel noted that neither father nor paternal grandfather had any prior child welfare or criminal history that would cast doubt on their credibility. Alexander, by contrast, had admitted to lying about being hit and the evidence showed he had a problem with lying.

Alexander's counsel argued the court should sustain the petition. Counsel pointed to Alexander's statements about father hitting him, the marks and bruises on Alexander's body, and the medical examiner's statement that the bruises were consistent with being hit with a charger cord folded in half. Counsel also argued paternal grandfather was not credible because he was protecting father.

The Department's counsel argued Alexander's statements were consistent at least in the initial phase of the investigation and the Department met its burden of proof by a preponderance of the evidence.

The juvenile court observed this was "an extremely difficult case" with "evidence pointing either way." After briefly taking the matter under submission, the court dismissed the petition. The court pointed to "the undisputed evidence that Alexander lies

a lot, including about very serious things, including about claims of abuse.” In addition, the court noted there was no evidence of prior physical discipline or abuse by father. The court concluded it could not find it was more likely than not that father hit Alexander.

On February 9, Alexander filed a notice of appeal.⁴ The Department filed a notice of appeal on February 23.⁵

DISCUSSION

A. Standard of Review

“In dependency proceedings, the [Department] has the burden to prove by a preponderance of the evidence that the minor who is the subject of the dependency petition comes under

⁴ Alexander also filed a petition for writ of supersedeas and a request for an immediate stay. The Department joined the petition. We granted a temporary stay and subsequently denied the petition (lifting the stay), concluding: “Although there is substantial evidence to support a finding that father physically abused minor with a cell phone cord, the juvenile court has discretion to weigh the competing evidence based on its own credibility determinations and observations in court. In light of this broad discretion, there was substantial evidence, albeit not strong evidence, to support the juvenile court's order dismissing the petition.” This summary denial does not have law-of-the-case effect. (See *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 200; *Kowis v. Howard* (1992) 3 Cal.4th 888, 895, 897.)

⁵ An order dismissing a dependency petition and declining to take jurisdiction is an appealable order. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 197 (*Sheila B.*)).

the juvenile court's jurisdiction." (*In re Isabella F.* (2014) 226 Cal.App.4th 128, 137.)

"We review the juvenile court's jurisdictional findings and orders for substantial evidence." (*In re R.C.* (2012) 210 Cal.App.4th 930, 940 (*R.C.*)). "Substantial evidence is relevant evidence which adequately supports a conclusion; it is evidence which is reasonable in nature, credible and of solid value." (*Id.* at p. 941.) "We draw all reasonable inferences from the evidence to support the findings and orders of the juvenile court." (*Ibid.*) "[I]ssues of fact, weight and credibility are the provinces of the juvenile court." (*Ibid.*)

"[I]n reviewing a challenge to the sufficiency of the dependency court's jurisdictional findings, our power begins and ends with a determination . . . whether substantial evidence exists, contradicted or uncontradicted, supporting the dependency court's determinations. . . . [Citations.] Thus, we do not consider whether there is evidence from which the dependency court could have drawn a different conclusion but whether there is substantial evidence to support the conclusion that the court did draw. [Citations.]" (*In re Noe F.* (2013) 213 Cal.App.4th 358, 366 (*Noe F.*)).

B. Substantial evidence supports the juvenile court’s order dismissing the petition.

1. On substantial evidence review, affirmance is required absent indisputable evidence of abuse that no reasonable trier of fact could reject.

Applying substantial evidence review, an appellate court will affirm the juvenile court’s dismissal of a dependency petition unless the record contains “indisputable evidence of abuse—evidence no reasonable trier of fact could have rejected” (*Sheila B.*, *supra*, 19 Cal.App.4th at p. 200.) In *Sheila B.*, the juvenile court dismissed a petition after a contested jurisdictional hearing in which the child recanted the sexual abuse allegations that gave rise to the petition and medical experts testified they could not say definitively that the child had been sexually abused. (*Id.* at pp. 192-193.) The Court of Appeal affirmed, observing the trial court found the medical evidence was not unequivocal and “was persuaded of the truth of [the child’s] recantation.” (*Id.* at p. 200.) In reviewing the record on appeal, the appellate court found no “indisputable evidence of abuse.” (*Ibid.*) Instead, substantial evidence supported the juvenile court’s decision to dismiss the petition. (*Ibid.*)

Similarly, in *In re Roberto C.* (2012) 209 Cal.App.4th 1241 (*Roberto C.*), the Court of Appeal affirmed the juvenile court’s order dismissing a petition which alleged the child suffered serious injury due to acts by his parents.⁶ (*Id.* at pp. 1243-1244.)

⁶ The court dismissed the petition under section 350, subdivision (c) after the Department presented its evidence at the

The juvenile court “pointed to the fact that there was no evidence linking the parents to the infliction of the injuries” and “expressed concern about the credibility of the [Department’s] investigator, and the babysitter, concerning the injuries and the knowledge they attributed to the parents.” (*Id.* at p. 1254.) The Court of Appeal concluded that substantial evidence supported the juvenile court’s finding that there was no evidence the parents knew or should have known about the abuse.⁷ (*Id.* at p. 1256.)

Thus, it is analytically helpful to assess whether the record contains evidence which compels a finding of jurisdiction under section 300. (See *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528 (*I.W.*) [“where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the

adjudication hearing. (*Roberto C., supra*, 209 Cal.App.4th at p. 1248.)

⁷ In contrast, appellate courts have reversed orders dismissing dependency petitions when the juvenile court’s legal or evidentiary errors contributed to the ruling. (See *In re B.D.* (2007) 156 Cal.App.4th 975, 986 [reversing order dismissing petitions where juvenile court mistakenly believed it could not consider four witnesses’ statements at jurisdiction hearing]; *In re E.H.* (2003) 108 Cal.App.4th 659, 670 [juvenile court erred in ruling Department was required to establish parents had actual knowledge that child was being abused].) Alexander does not identify any legal or evidentiary errors by the juvenile court.

evidence compels a finding in favor of the appellant as a matter of law”].)⁸

2. The record does not contain indisputable evidence of abuse that no reasonable trier of fact could reject.

Alexander argues the order dismissing the petition was not supported by substantial evidence. Yet he does not assert, much less demonstrate, that the record contains “indisputable evidence of abuse—evidence no reasonable trier of fact could have rejected” (*Sheila B.*, *supra*, 19 Cal.App.4th at p. 200.)

Instead, Alexander points to evidence from which the juvenile court might have drawn inferences supporting jurisdiction under section 300, subdivisions (a) and (b)(1).⁹ He

⁸ The court in *I.W.* explained: “Here, as in many dependency cases, the case posed evidentiary conflicts. And, as is common in many dependency cases, this case obligated the juvenile court to make highly subjective evaluations about competing . . . evidence. As reflected in the juvenile court’s ruling, the juvenile court considered the conflicting, competing evidence and essentially discounted mother’s evidence in concluding that mother had failed to carry her burden [of proving an exception to termination of parental rights]. It is not our function to retry the case.” (*I.W.*, *supra*, 180 Cal.App.4th at p. 1528 [affirming order terminating parental rights].)

⁹ As relevant here, section 300 provides:
“A child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

also challenges the court’s credibility findings. These arguments are insufficient to warrant reversal. (See *Noe F.*, *supra*, 213 Cal.App.4th at p. 366 [“we do not consider whether there is evidence from which the dependency court could have drawn a different conclusion but whether there is substantial evidence to support the conclusion that the court did draw”].)

Alexander further argues the juvenile court “relied upon erroneous information, inaccurate impressions, and inappropriate personal opinion” in dismissing the petition.

“(a) The 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. For purposes of this subdivision, “serious physical harm” does not include reasonable and age-appropriate spanking to the buttocks if there is no evidence of serious physical injury.

“(b)(1) 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 willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse. . . .” (§ 300, subd. (a), (b)(1).)

Again, however, Alexander fails to address whether the record contains evidence which would compel a reasonable fact-finder to conclude father physically abused him.

Declining Alexander's invitation to re-weigh the evidence, we conclude that substantial evidence supports the juvenile court's order dismissing the petition. (See *In re I.J.* (2013) 56 Cal.4th 766, 773 [“We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court”].) This evidence includes Alexander's statements recanting his claims that father hit him, statements by Alexander's teacher and the director of the Boys and Girls Club describing Alexander's frequent lying, and father's statements denying any abuse.

Because substantial evidence supports the juvenile court's order dismissing the petition, we affirm.

DISPOSITION

The order dismissing the petition is affirmed.

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JASKOL, J.*

We concur:

BAKER, Acting P. J.

MOOR, J.

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