Filed 7/18/18 In re J.C. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re J.C., a Person Coming Under the Juvenile Court Law.	B285785 (Los Angeles County Super. Ct. No. DK22357)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. R.R., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Kristen Byrdsong, Commissioner. Reversed.

Brian Bitker, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Jeanette Cauble, Principal Deputy County Counsel, for Plaintiff and Respondent.

R.R. (mother) appeals from a juvenile court's order declaring her daughter, J.C., a dependent of the court under Welfare and Institutions Code section 300.[1] She contends that there is insufficient evidence to support the jurisdictional findings under section 300, subdivision (b), because there is no evidence to support a finding that J.C. has suffered, or is at substantial risk of suffering, serious physical harm. We agree, and reverse.

BACKGROUND

On the evening of February 5, 2017,[2] mother called 911 after her boyfriend, E.B., struck her several times with his fist. Mother, seven–year–old J.C., and E.B., had returned home after a Super Bowl party. E.B. was drunk. He and mother (then six–weeks pregnant with his child) argued. The argument escalated, and E.B. tried to punch mother in the stomach. She turned her body before he did so, and he struck her three times with his fist on her lower back. Mother said this was the first time E.B. had ever struck her. E.B. fled when mother called 911. Mother complained of minimal pain (2 on a scale of 1-to-10), and refused to be seen by paramedics. J.C. was home at the time the incident occurred.

---

[1] Statutory references are to the Welfare and Institutions Code.

[2] Unspecified date references are to calendar year 2017.

On February 10, a DCFS children's social worker (CSW) visited the home in which mother, J.C. and E.B. had been living with E.B.'s father, Manuel. Mother said she and J.C. had been living with J.C.'s maternal grandmother (MGM) since the incident of domestic violence. Mother denied that J.C. could have seen E.B. hit her, or heard any commotion. She said that the incident occurred in a hallway. J.C. was in another room, and there had been no yelling or screaming.

Mother told the CSW that E.B. had called her, but she was not ready to speak to him. She said she "might be returning back to the home." Mother and J.C. had lived with E.B. since April 2016.[3] Mother described her relationship with E.B. as "good," and said she felt safe. E.B. was "nice" to J.C., and the child had not been physically abused. Mother said she and E.B. rarely argued, and there had been no other incidents of domestic violence. She denied that E.B. abused alcohol or used drugs. Mother knew E.B. had been on parole since March 2016, and was in jail for two or three years, but she did not know why and had not asked him. DCFS's investigation revealed that E.B. had been convicted in October 2015 of felony threats to commit a crime resulting

---

[3] Mother began living with E.B. after her relationship with J.C.'s father, Jaime C. (father). J.C.'s paternal grandmother (PGM) picks J.C. up on weekend mornings and monitors the child's daytime visits with her father, who has mental illness. Father participated in these proceedings, but is not a party to this appeal.

in death or great bodily harm, and sentenced to 32 months in prison.[4] (Pen. Code, §§ 422, subd. (a), 667, 1170.12.)

The CSW spoke with Manuel on February 10. Manuel said E.B. was drunk at the time of the incident. Manuel had not heard E.B. and mother argue often, but he was rarely home at the same time as his son. He said the apartment manager had asked E.B. and mother to lower their voices so as not to bother neighbors, but neither Manuel or the manager had ever seen or heard anything indicative of domestic violence occurring between the couple. Manuel told the CSW that mother and J.C. were at his home on February 9, but he did not know if they stayed overnight.

J.C. was interviewed on February 10. She said that she and mother lived with E.B. and E.B.'s father, and E.B. was "pretty nice." J.C. had not seen any domestic violence between mother and E.B. after the Super Bowl party, or ever. When mother and E.B. got mad at one another, one of them left the room. She knew mother had called the police, but "didn't really hear [her] conversation" with the officers. J.C. felt safe with E.B. and mother. J.C. had slept at her (E.B.'s) house on February 9, but sometimes slept at MGM's home. She visited her father every weekend, but did not stay overnight, and PGM was always present. J.C. denied having been neglected, or physically or sexually

---

[4] E.B.'s 16-month sentence was doubled after he admitted a prior strike. (Pen. Code, §§ 667, 1170.12.)

abused. She felt safe and unafraid at home, said there were no weapons in the house, and that no one drank or used drugs.

On February 24, mother told DCFS that she had moved back in with E.B., and their relationship was "getting better." She said E.B. drank "here and there," but also said she and he had agreed he would not drink anymore. Mother acknowledged that E.B. had "anger management" issues and became angry when he drank. E.B. was not taking any classes or therapy to address anger management. Mother terminated her pregnancy on February 25.

The CSW told mother she had made several unsuccessful attempts to contact E.B. to schedule a meeting with him. Mother said E.B. wanted nothing to do with the case, as he was not J.C.'s father. The CSW explained her need to talk to E.B. since he was the perpetrator who hit mother. E.B. subsequently called the CSW to say he had no intention of meeting with her.

J.C.'s teacher told DCFS that the child's behavior had improved, but she was bossy, aggressive and sometimes spoke like a baby. J.C. was often absent or tardy, and was inconsistent about turning in work. The teacher believed J.C. did not get much attention from mother. However, she saw no signs of child abuse, and J.C. never mentioned any domestic violence between her mother and E.B.

On March 14, mother informed the CSW that E.B. had quit his job, and was under less stress and better able to calm down. Mother rejected the CSW's suggestion that the couple enroll in joint therapy, saying they were not interested in, and did not have time for, therapy.

One family member told the CSW that she saw mother and E.B. every day, and the couple "seem[ed] happy." The family member had not seen the couple argue, and denied that there was any domestic violence, drug use or drinking. She had no concerns for J.C.'s safety, said mother was a "great mom" with lots of family support, and that J.C. was "a happy girl." At around the same time, the CSW met again with J.C. who reiterated her general feeling of safety with the adults around her, and her positive feelings for E.B. J.C. said that she, mother and E.B. were now living with MGM.

The CSW contacted MGM on March 17. MGM stated that she cared for J.C. on a daily basis, and had no safety concerns for the child. She denied that E.B. and mother were aggressive with one another, but refused to answer questions regarding alcohol or substance abuse by either of them. MGM claimed that PGM and father were "jealous," and claimed PGM had made the DCFS referral. On March 17, mother informed DCFS that she was still involved in a relationship with E.B. He did not live with her and J.C. at MGM's house, but had stayed with them there for two days.

An investigation revealed that J.C.'s family had a prior DCFS referral in 2012 after mother, then an unlicensed driver, was involved in an accident while driving a car in which J.C. and her father were passengers. An allegation of general neglect by the parents was substantiated, and voluntary family maintenance services were provided until mid–January 2014. Mother was fined for an infraction–driving without a license. J.C.'s father had a criminal record that

included a 2010 misdemeanor conviction for the manufacture and possession of a dangerous weapon.

On April 6, DCFS filed a non-detained dependency petition, pursuant to section 300, alleging that mother and E.B., who was intoxicated, engaged in a violent altercation while J.C. was in the home, and that mother permitted E.B., who had been convicted of criminal threats, to live in the same home as, and have unlimited access to, J.C., creating a detrimental, endangering home environment, and placing the child at risk of serious physical harm or danger. (§ 300, subds. (a), (b).)

A detention hearing was conducted the same date. Mother, father and J.C. were present and appointed counsel. The court found father to be J.C.'s presumed father, and released J.C. to her parents' care. Mother submitted on DCFS's request that J.C. have no contact with E.B., and agreed to attend a domestic violence program, and ensure that J.C. maintained regular school attendance. The matter was continued for an adjudication hearing.

On June 6, DCFS filed the operative amended petition, adding allegations regarding father's frequent and historical use of alcohol and marijuana, and his history of significant mental and emotional problems, attempted suicide and involuntary hospitalizations.

In its report for the June 20 combined jurisdiction/disposition hearing, DCFS noted that J.C. remained in mother's care. J.C. told DCFS that E.B. "used to be [mother's] boyfriend." She reiterated that she had never seen any physical violence between mother and E.B., never experienced any abuse and had no fear of anyone. J.C. denied

that mother, E.B. or her father did drugs or drank, and stated she never saw any of them intoxicated. She wanted to live with mother and visit her father.

Mother informed DCFS again that the incident of domestic violence with E.B. was an isolated one, and violence was not an issue during their relationship. When she spoke with the CSW on May 19, mother's story changed regarding what had transpired on February 5. She now said that E.B. meant to punch the closet with his fist, but accidentally struck her instead when she "passed by" or "tried to walk through it." Mother denied that E.B. did drugs or abused alcohol, but conceded he had been drunk the day of the domestic violence incident. She said E.B. drank on special occasions. Mother also informed DCFS that she had terminated her relationship with E.B., and no longer spoke to him. She had no desire to revive the relationship with E.B.; it was "something that [she wanted] to leave behind." She wanted J.C. to remain in her custody, with frequent visits with father.

DCFS observed that, although mother had received an emergency restraining order as a result of the incident of domestic violence on February 5, she returned (with J.C.) to E.B. shortly thereafter. However, once DCFS became involved with the family, mother and J.C. moved out of E.B.'s house. They now lived with MGM and mother had cut off contact with E.B. DCFS opined that mother split up with E.B. to prevent J.C. from being detained.

The jurisdictional hearing was conducted on June 20. The court received DCFS's detention and jurisdiction/disposition reports in

evidence. The parents requested that the court dismiss the allegations against them. Mother's counsel pointed out that she was no longer involved with E.B., and no nexus had been shown between his alcohol use and a risk of harm to J.C. J.C.'s counsel asked that the court dismiss the domestic violence allegation filed pursuant to section 300, subdivision (a), but sustain the same allegation under section 300, subdivision (b), as well as the allegation regarding a detrimental and endangering home environment due to E.B.'s alcohol abuse, which led to the incident of domestic violence. DCFS argued that the petition should be sustained in its entirety, arguing that mother had minimized what happened, maintained a romantic relationship with E.B. after an incident of domestic violence serious enough to cause her to call the police, and acknowledged that E.B. had unaddressed anger management issues.

The court sustained the allegations of domestic violence and mother's failure to protect J.C. pursuant to section 300, subdivision (b), found J.C. to be a child described by section 300, subdivision (b), and dismissed the remaining allegations.[5]

---

[5] The following allegations were sustained:
"b-1: On 2/5/17, [mother] and the mother's male companion, [E.B.], engaged in a violent altercation in which [E.B.] struck . . . mother's body several times with [his] fist while the child was present in the home. The mother failed to protect the child in that the mother and the child resided in the home of [E.B.] and allowed [E.B.] to have unlimited access to the child. [E.B.] has a criminal history of a conviction for Criminal Threats. [E.B.'s] violent conduct against the mother and the mother's failure to protect the child endanger the

Proceeding to disposition, the court declared J.C. a dependent of the court. Mother was ordered to complete a domestic violence program for victims, to undergo individual counseling to address parenting education, domestic violence and child safety, and to participate in joint counseling with father and J.C., when appropriate. J.C. was ordered to remain in her parents' custody, with no contact with E.B. This timely appeal followed.

DISCUSSION

Mother contends the jurisdictional findings, premised on an isolated incident of domestic violence, lack sufficient evidentiary support to bring J.C. within the purview of section 300, subdivision (b), particularly given the fact that her relationship with E.B. had ended by

---

child's physical health and safety and place the child at risk of serious physical harm, damage, danger and failure to protect.
"b-2: [Mother] established a detrimental and an endangering home environment for the child in that the mother and the child resided in the home with [E.B.], who abuses alcohol. On 2/5/17, [E.B.] was under the influence of alcohol and acted violently towards the mother while the child was present in the home. The mother knew of [E.B.'s] substance abuse and failed to protect the child in that the mother allowed [E.B.] to have unlimited access to the child. Such a detrimental and an endangering home environment established for the child by the mother and the mother's failure to protect the child endanger the child's physical health and safety and place the child at risk of serious physical harm, damage, danger and failure to protect."

the time of the hearing, and the absence of evidence to suggest that an incident of domestic violence would reoccur in the future.[6]

The pivotal question under section 300 is whether the circumstances at the time of the jurisdictional hearing subject the child to the defined risk of harm. (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022 (*J.N.*).) DCFS bears the burden of proving by a preponderance of the evidence that the minor comes under the juvenile court's jurisdiction. (*In re D.C.* (2011) 195 Cal.App.4th 1010, 1014.) "On appeal from an order making jurisdictional findings, we must uphold the court's findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings. [Citation.]" (*In re*

---

[6] We reject DCFS's contention that we need not consider the merits of mother's argument because she does not purport to appeal from the sustained b–2 count. First, although, on its face the petition separates allegations of alcohol abuse and domestic violence, the two are intertwined aspects of the same incident, as demonstrated by allegation b–2 which states, that "[o]n 2/5/17, [E.B.] was under the influence of alcohol and acted violently towards the mother while [J.C.] was present in the home."

Second, even if we credit DCFS's assertion that mother failed to address a sustained allegation on appeal, we "retain discretion to consider the merits of a parent's appeal [citation], and often do so when the finding [may be] prejudicial to the appellant or could potentially impact current or future dependency [or other] proceedings." (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452 (*M.W.*).) The finding that mother placed her child at substantial risk of serious harm as a result of an incident of drunken domestic violence could be used against her (e.g., father has requested sole custody of J.C. based on his belief that mother chooses abusive partners). We therefore exercise our discretion and reach the merits of her claims. (*Ibid.*)

Veronica G. (2007) 157 Cal.App.4th 179, 185.) Substantial evidence is that which is reasonable, credible, and of solid value. (*In re Christopher C.* (2010) 182 Cal.App.4th 73, 84.) "'A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.] Furthermore, "[w]hile substantial evidence may consist of inferences, such inferences must be 'a product of logic and reason' and 'must rest on the evidence' [citation]; inferences that are the result of mere speculation or conjecture cannot support a finding [citations]." [Citation.] "The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record." [Citation.]' [Citations.]" (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216–217.)

"Jurisdiction under section 300, subdivision (b)(1) requires proof that a child 'has suffered, or there is a substantial risk that the minor 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 minor . . . .'" (*M.W.*, *supra*, 238 Cal.App.4th at p. 1453.) Physical violence between parents may support the exercise of jurisdiction under section 300, subdivision (b) if there is evidence that the violence is ongoing or likely to continue and it directly harmed the child physically or placed him or her at risk of physical harm. (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717 (*Daisy H.*).) An isolated incident that places a child at risk of serious physical harm may be sufficient to support a jurisdictional finding, but the court should first consider "the nature of the conduct and all surrounding circumstances."

(*J.N., supra*, 181 Cal.App.4th at p. 1025.) Pure speculation that the conduct is likely to reoccur is not enough. (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 565.) The risk of harm to the child must be present at the time of the jurisdictional hearing. (*J.N., supra*, 161 Cal.App.4th at p. 1022.)

DCFS has pointed to no historical evidence of violence in mother's relationship with E.B., nor has it presented any evidence such violence is ongoing or likely to resume. Mother has consistently insisted the incident on February 5 was an isolated one. Statements made by almost every witness DCFS interviewed who had an opportunity to observe mother and E.B. together during their relationship supported that claim. Mother and E.B. no longer live together, their relationship had been terminated by the time of the jurisdictional hearing and mother told DCFS she no longer even spoke to E.B. The record contains no evidence to indicate she has any intention of reviving the relationship. Most importantly, there was no evidence J.C. was ever physically harmed or placed at risk of physical harm due to E.B.'s drinking or domestic violence against mother in February 2016, or ever, or that she was at risk of such harm.

Thus, although a parent's involvement in domestic violence may support the exercise of jurisdiction under section 300, subdivision (b)(1), this record lacks evidence that such violence will likely resume. (*Daisy H., supr*a, 192 Cal.App.4th at p. 717.) DCFS has presented no evidence that J.C. is at a ""substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical

harm will reoccur). [Citations.]'" [Citation.]" (*In re J.O.* (2009) 178 Cal.App.4th 139, 152.) "As appellate courts have repeatedly stressed, '"[s]ubdivision (b) means what it says. Before courts and agencies can exert jurisdiction under section 300, subdivision (b), there must be evidence indicating that the child is exposed to a substantial risk of serious physical harm or illness."' [Citations.]" (*In re Jesus M.* (2015) 235 Cal.App.4th 104, 111–112.)

We conclude there is insufficient evidence to support the juvenile court's finding that J.C. is a child described by section 300, subdivision (b)(1).

DISPOSITION

The jurisdictional order is reversed and all subsequent orders are vacated as moot.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, J.

We concur:

EPSTEIN, P. J. MANELLA, J.