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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re LUZ G., a Person Coming
Under the Juvenile Court Law.

B283729

(Los Angeles County
Super. Ct. No. DK19660)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES et al.,

Plaintiff and Appellant,

v.

RAFAEL G.,

Defendant and Appellant.

APPEALS from orders of the Superior Court of Los Angeles
County. Steff R. Padilla, Commissioner. Affirmed.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel and Sarah Vesecky, Senior Deputy
County Counsel, for Plaintiff and Appellant.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

* * * * *

The juvenile court exerted dependency jurisdiction over an infant after finding she was at substantial risk of suffering serious physical harm due to her parents' ongoing domestic violence. Her father appeals this finding as well as the court's subsequent order removing the infant from his custody. The Los Angeles County Department of Children and Family Services (Department) cross-appeals the court's dismissal of two alternative statutory grounds for dependency jurisdiction based on the parents' same conduct. The juvenile court's orders were supported by substantial evidence, and we accordingly have no occasion to reach the Department's cross-appeal. We affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

Sandra V. (mother) and Rafael G. (father) have one child together, Luz. G (Luz). At the time Luz was born in November 2016, mother had four other children by another man—Adrianna, Aileen, Sophia, and Jesus.

In 2016, mother and father engaged in domestic violence. They regularly argued. On several occasions, they also got physical. In February or March 2016, father punched and kicked mother in the head after she woke him. Around the same time, father knocked mother to the floor and bruised her arm. In August 2016, when mother was six months pregnant with Luz, father escalated a verbal argument by pushing mother; the situation was diffused only when 13-year-old Sophia jumped between them. There were other possible incidents as well: Adrianna reported seeing father hit mother on more than one

occasion, and Sophia reported another incident where she feared father would strike mother.

Many of the incidents of domestic violence occurred while mother's children were in the room. Both Adrianna and Sophia witnessed the punching incident, and Sophia literally got in the middle of the subsequent pushing incident. Indeed, Sophia had a penchant for jumping in front of her mother to protect her from father or from her "real" father.

Mother and father both said that mother was usually the aggressor, while at the same time denying any domestic violence at all. Mother said that her children exaggerate, while father insisted that they were making it all up.

II. Procedural Background

Just days after Luz's birth in November 2016, the Department filed a petition asking the juvenile court to exert dependency jurisdiction over Luz. As pertinent to this appeal, the Department alleged that mother and father "have a history of engaging in violent altercations" in the presence of mother's four other children. The Department further alleged that this conduct placed Luz at "substantial risk" of "serious physical harm" (1) "inflicted nonaccidentally upon" Luz (thereby invoking jurisdiction under subdivision (a) of section 300 of the Welfare and Institutions Code);¹ (2) due to mother's "failure . . . to . . . adequately . . . protect" Luz (thereby invoking jurisdiction under subdivision (b) of section 300); and (3) due to the exposure—and hence, abuse and neglect—of mother's other four children to the

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

domestic violence (thereby invoking jurisdiction under subdivision (j) of section 300).²

In January 2017, the juvenile court held the jurisdictional hearing. The court sustained jurisdiction under subdivision (a) of section 300, finding that “[t]here was active, ongoing domestic violence while [mother] was pregnant.” The court dismissed the parallel allegations under subdivisions (b) and (j) as “repetitive.”

In April 2017, the juvenile court held the dispositional hearing. Father testified, repeating his denial of any “physical fights,” and explaining that he was currently living with his sister. Based on its observations of the couple’s behavior in court as well as a prior report indicating that father keeps showing up at mother’s monitored visitations with the children (and, indeed, sometimes transports her there), the court found that mother and father are still “a couple” despite their purportedly separate living arrangements. The court also expressed concern about the “flashes of anger” it had witnessed “in this very courtroom” as well as the parents’ “absolute denial” of any domestic violence.

Father filed a timely appeal, and the Department filed a timely cross-appeal.

² The petition also asked the juvenile court to exercise dependency jurisdiction due to (1) the history of domestic violence between mother and the father of her other children as well as (2) mother’s “mental and emotional problems.” The juvenile court sustained jurisdiction on these additional grounds, but they are not pertinent to this appeal because they do not involve father.

DISCUSSION

I. Jurisdiction

Father challenges the juvenile court's jurisdictional finding under subdivision (a) of section 300. In evaluating this claim, we ask only whether there is substantial evidence to support that finding, and do so viewing the evidence in the light most favorable to the juvenile court's finding and drawing all inferences in favor of that finding. (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1161-1162.)

Subdivision (a) of section 300 empowers a juvenile court to exert dependency jurisdiction when a "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." (§ 300, subd. (a).) Exposing a child to domestic violence between her parents is sufficient to trigger jurisdiction under this provision if (1) the violence places the child in harm's way, and (2) "there is evidence that the violence is ongoing or likely to continue." (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598-599 (*Giovanni F.*); *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717 (*Daisy H.*); *In re Jonathan B.* (2015) 235 Cal.App.4th 115, 120-121 (*Jonathan B.*)). This provision does not require that the parents direct their violence at the child (*In re M.M.* (2015) 240 Cal.App.4th 703, 719-720 (*M.M.*)) because the "[d]omestic violence [itself] is nonaccidental" (*Giovanni F.*, at p. 600). Further, because this provision reaches situations where there is a "substantial risk" of harm, it does not require a showing that a child was previously harmed by the domestic violence. (*Giovanni F.*, at p. 598; see also *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383 ["the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary

to protect the child”]; *In re Yolanda L.* (2017) 7 Cal.App.5th 987, 993 [same].)³

Substantial evidence supports the juvenile court’s finding that the domestic violence between mother and father placed Luz at substantial risk of serious physical harm. By virtue of its finding, the juvenile court credited the children’s account of past domestic violence rather than mother’s and father’s blanket denials. The children recounted two specific instances (the punching and pushing incidents) and potentially one more (the additional instance witnessed by Adrianna alone) where mother and father got physical with at least one child present. As noted above, Sophia placed herself *between* mother and father during the pushing incident. This evidence supports the juvenile court’s finding that mother and father engaged in nonaccidental acts of domestic violence while mother’s children were in harm’s way. What is more, there is evidence that this pattern of violence is likely to continue because mother and father are still together; neither reported any of their prior incidents to the police; and both of them are in “absolute denial.” All three considerations constitute evidence of ongoing risk. (Cf. *Jonathan B.*, *supra*, 235 Cal.App.4th at p. 120 [parent’s willingness to report

³ Subdivision (a) also provides a list of circumstances under which a juvenile court “may find there is a substantial risk of serious future injury”—namely, (1) when “a less serious injury was inflicted,” (2) when there is “a history of repeated inflictions of injuries on the child or the child’s siblings,” or (3) when “a combination of these and other actions by the parent or guardian . . . indicate[s] the child is at risk of serious physical harm.” (§ 300, subd. (a).) This list does not purport to be exhaustive, and courts have not interpreted it as such. (*Giovanni F.*, *supra*, 184 Cal.App.4th at pp. 598-599.)

incidents to police reduces risk]; *Giovanni F.*, *supra*, 184 Cal.App.4th at p. 601 [parent’s denial of domestic violence increases risk].)

Father levels three attacks at the juvenile court’s finding.

First, he asserts that *Luz* was never in harm’s way because she was in utero during the punching and pushing incidents, and fetuses are not protected by the law of dependency. Father is correct that an “unborn fetus” is not a “child” within the meaning of dependency law (*In re Steven S.* (1981) 126 Cal.App.3d 23, 29-30), but this argument misses the point: *Luz* is at risk now—not because she was at risk as a fetus—but because mother and father were willing to put other children in harm’s way while engaging in domestic violence and are likely to continue to do so, and because *Luz* is now one of those children.

Second, father points out that mother was the “aggressor.” This may not be accurate (because some of the children’s reports showed father being the more aggressive parent or landing the first blow), and is in any event irrelevant (because the risk of serious physical harm to the children is still the same no matter *who* started the fight).

Lastly, father tries to align this case with prior cases that have rejected dependency jurisdiction under section 300, subdivision (a), and to distinguish this case from prior cases that have upheld dependency jurisdiction under this provision. His efforts do not succeed. To begin, dependency jurisdiction is inherently fact-driven, which makes father’s mode of analysis difficult to apply. More to the point, each of the cases is factually distinguishable. Father analogizes this case to *Jonathan B.*, *supra*, 235 Cal.App.4th 115 and *Daisy H.*, *supra*, 192 Cal.App.4th 713, on the ground that they, like this case, involve just a single

prior incident of domestic violence. However, this case involved multiple prior incidents. Further, and unlike *Jonathan B.* and *Daisy H.*, the domestic violence incidents in this case were all recent and, as explained above, there continues to be a likelihood they may continue. (See *Jonathan B.*, at pp. 119-120 [single incident in 2009, and a brief flare up in 2014 after the parents ended their relationship and father moved out in 2013; insufficient future risk to children]; *Daisy H.*, at p. 717 [single incident two to seven years prior to dependency petition; insufficient future risk to children].) Father also tries to distinguish this case from *Giovanni F.*, *supra*, 184 Cal.App.4th 594 and *M.M.*, *supra*, 240 Cal.App.4th 703—each of which involved more violent incidents of domestic violence—but neither case purports to set the floor for jurisdiction under section 300, subdivision (a). Put differently, the more egregious facts in *Giovanni F.* and *M.M.* do not undermine our conclusion that substantial evidence supports jurisdiction here.

Because a single basis for juvenile court jurisdiction is sufficient, our affirmance of jurisdiction under subdivision (a) of section 300 renders it unnecessary to reach the merits of the Department’s cross-appeal seeking to exert jurisdiction for the same events on alternate grounds. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451 [“if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence[,] . . . the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence”].)

II. Removal

A juvenile court may remove a child from her parents only after finding, by clear and convincing evidence, that (1) “[t]here is

or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the [child] if [she was] returned home,” and (2) “there are no reasonable means” short of removal “by which the [child’s] physical health can be protected.” (§ 361, subd. (c)(1).) We review a removal order for substantial evidence (*In re R.T.* (2017) 3 Cal.5th 622, 633), although courts remain divided over whether we do so through the prism of clear and convincing evidence. (Compare *In re Ashly F.* (2014) 225 Cal.App.4th 803, 808 [applying clear and convincing evidence standard to substantial evidence review on appeal] with *In re J.S.* (2014) 228 Cal.App.4th 1483, 1492-1493 [disregarding clear and convincing evidence standard on appeal].) We will sidestep this conflict by using the more parent-friendly prism of clear and convincing evidence.

Substantial evidence supports the juvenile court’s removal order in this case. Substantial evidence supports a finding, by clear and convincing evidence, that Luz would face a substantial danger to her health and safety if she were returned home. The juvenile court’s jurisdictional finding already constitutes a finding, by a preponderance of the evidence, that Luz is at substantial risk of serious physical harm. The repeated flare-ups of violence between mother and father despite the proximity of their children, coupled with the ongoing nature of their relationship, provides a sufficient basis to conclude, by clear and convincing evidence, that returning Luz to father’s custody would be dangerous. Substantial evidence also supports the finding that no reasonable means short of removal would protect Luz. Citing *In re Henry V.* (2004) 119 Cal.App.4th 522, father argues that intensive monitoring by the Department may be sufficient to avoid the need for removal after a single incident of physical

abuse. However, this case involved more than a single incident. Further, father has already demonstrated his willingness to skirt the visitation rules set by the juvenile court and the Department, which severely undercuts his position that Department supervision short of removal would suffice to protect Luz.

DISPOSITION

The orders are affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ