

Filed 10/4/19 In re Y.B. CA2/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Y.B. et al., Persons Coming
Under the Juvenile Court Law.

B292878 c/w B293970

(Los Angeles County
Super. Ct. No. 17CCJP00839)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

CARLOS B. et al.,

Defendants and Appellants.

APPEALS from orders of the Superior Court of Los Angeles
County, Pete R. Navarro, Commissioner. Affirmed.

Megan Turkat Schirn, under appointment by the Court of
Appeal, for Defendant and Appellant Carlos B.

Jesse F. Rodriguez, under appointment by the Court of Appeal, for Defendant and Appellant Y.L.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Peter Ferrera, Principal Deputy County Counsel, for Plaintiff and Respondent.

Carlos B. (Father) and Y.L. (Mother) appeal from orders declaring their minor children to be dependents of the court pursuant to Welfare and Institutions Code¹ section 300, subdivisions (b), (d), and (j) based on allegations that Father sexually abused their daughter S.B. (born in 2005). The parents contend insufficient evidence supported the juvenile court's jurisdictional findings. As we shall explain, we disagree and therefore affirm.

BACKGROUND

A. The Family and Prior Sexual Abuse Allegation

The family in the matter consists of S.B., Father and Mother, S.B.'s brothers, Y.B. (born in 2000), J.B. (born in 2007), Al. B. (born in 2009) and A.B (born in 2010).²

The family first came to the attention of the Department of Children and Family Services (DCFS) in November 2016 when it

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

² Father and Mother also have another daughter, D.B. who is twenty-years-old, and is not the subject of the proceedings.

received a referral from S.B.'s school that S.B. had disclosed to her classmates that she had been sexually abused by Father. Her friends shared the information with a teacher. According to the school personnel, S.B. was uncomfortable and embarrassed, and she did not want to discuss the matter because she did not want Father to go jail. The reporting party indicated that S.B. presented as depressed and isolated, creating the impression that S.B. may have been sexually abused.

According to S.B., when her parents learned that a report had been made alleging that Father had sexually abused her, they were angry with S.B. They told her that the family would be separated and Father would go to jail and pressured her to recant. Because she did not want her Father to get in trouble, S.B. refused to participate in an interview or cooperate when the DCFS social worker came to their home to investigate the report. Both parents denied the claims of abuse. DCFS subsequently closed the matter, determining the allegations as "inconclusive."

B. Current Proceedings

After the 2016 report, Mother told Father to stay away from S.B. According to S.B., Father left her alone for a week or two and then resumed abusing her.

S.B. came to the attention of DCFS again in early October 2017 when it received a referral from S.B.'s school which indicated that S.B.'s friends had reported to a teacher that S.B. had been cutting herself and that she felt suicidal because her Father had continued to abuse her sexually. A children's social worker (CSW) spoke to S.B. at her school. S.B. stated that the abuse began in July 2016 by Father tickling her and then

escalated—he began touching her vagina and fondling her breasts over and under her clothing. In August 2016, Father grabbed her, locked the bedroom door, and put his penis in her vagina. In 2017, Father touched S.B.’s breasts and vagina every week. She stated that the last time this occurred was at the end of September 2017. The CSW asked S.B. if anyone else had sexually abused her. S.B. said that when she was six years old, her friend’s grandfather, E.L., put his penis in her rectum. She never told anyone about that incident.³ S.B. reported feeling depressed and suicidal because of the abuse by Father and because she felt Mother did not love her. She had cut her wrist to see how it felt; she thought about going home and stabbing herself with a kitchen knife.

The CSW took S.B. to the police station, where officers took S.B.’s statement.⁴ The CSW then placed S.B. in a group home.

The CSW interviewed both Mother and Father and the other children. Mother did not believe the allegations, noting she was usually in the home, the bedroom doors were kept open, and she never saw Father in a bedroom with S.B. with the door locked. Mother believed that S.B. had lied. Mother also reported that S.B. had recently been behaving badly and stating that she no longer wanted to live. Father also denied sexually abusing S.B. His statements regarding S.B.’s behavior were similar to

³ S.B.’s older sister, D.B., also reported that E.L. had sexually abused her when she was a minor. The police investigated the allegations against E.L. and he confessed. The district attorney’s office filed criminal charges against E.L.

⁴ The police presented the case against Father to the district attorney, who rejected it because, according to DCFS Father had not confessed to the allegations.

Mother's. Father agreed to move out so the four boys could remain in the home with Mother. The CSW interviewed the four boys, who denied seeing Father sexually abuse S.B. or being sexually abused themselves. S.B.'s older sister D.B., stated that she did not believe S.B.'s allegations of sexual abuse.

On October 4, 2017, DCFS filed a petition under section 300, subdivisions (b), (c), (d), and (j), alleging that Father sexually abused S.B., and Mother failed to protect S.B. from the sexual abuse, which placed all five minor children at risk of serious physical harm (counts b-1, d-1 & j-1) and placed S.B. at risk of serious emotional damage (count c-1).

At a hearing on October 5, 2017, Father and Mother denied the allegations of the petition. The juvenile court found a prima facie case for detention. It ordered the four boys detained with Mother and granted Father unmonitored visitation with the boys. The court ordered S.B. detained in shelter care under DCFS supervision. It gave Mother monitored visitation with S.B. and ordered that Father have no contact with her.

C. Jurisdiction/Disposition Proceedings

For the December 5, 2017 jurisdiction/disposition report, DCFS did not re-interview S.B., to avoid further trauma to her. The four boys stated that they felt safe in their home and wanted Father to return. However, the seven-year-old A.B. told the CSW: " 'Privates are the front and back. No one is supposed to touch you there. I have seen someone touching [S.B.] in her front privates. It happened in the other room. My sister was by the closet and my mom was in the other room. My brother's [sic] were outside playing. I was in the kitchen watching television. I paused (the TV) to hear and I heard [S.B.] crying. I went to see

why she was crying and I saw my dad touching her front private (vagina). He was touching her on top (over clothing). [S.B.] had an army color shirt with long sleeves and baby blue shorts. She looked sad. She ([S.B.] didn't like it. I didn't want to tell anyone because I didn't want anyone to laugh at her. I told my mom and [my sixteen-year-old brother Y.B.] after but they told me not to look. I feel sad because that's not the thing to do to family.' ”

DCFS noted that S.B. was receiving mental health services and was taking psychotropic medication. S.B. had a recent psychiatric hospitalization; she was diagnosed with severe and recurrent major depression with psychotic features and disruptive mood dysregulation disorder. S.B. had been discharged and was in a group home.⁵

On December 28, 2017, DCFS requested that the court order a forensic examination of S.B. by a court-appointed psychologist. The court granted the request. In the February 9, 2018 interim review report, DCFS noted that S.B. had been placed at Five Acres Group Home (Five Acres). Her forensic examination had not taken place; she was hospitalized twice in January and she “AWOL’ed from placement” before the rescheduled examination in February.

1. *S.B.’s Forensic Interview*

In the interview, S.B. discussed her thoughts of hurting or killing herself. S.B. stated that she regretted reporting the abuse because she missed her family and wanted to go home. S.B. said

⁵ S.B. had previously been hospitalized. Following her October 20, 2017 discharge, she was placed in a group home for 30 days because there were no foster homes available.

that Father sexually abused her more than once, and always in her parents' room. S.B. said that Father "raped" her when she was 11 years old. Father pushed S.B. onto the bed. Father's "front" touched her "front"; it went inside and hurt. Father told S.B., "not to scream and don't tell anybody." S.B. hit Father in the arm to make him stop, and he got off of her. S.B. added that when Father raped her, something white came out of his penis.

S.B. was angry "[t]hat I'm the victim and that I regret that I told the truth." If she had not said anything, she would not have been removed from her family. She explained why she said something: "I told my friends and because the last time I saw my friends I told them I wanted to commit suicide because of what was happening, and they told me to go talk to a counselor at school. And I did, and she reported it."

The interviewer asked if anyone else had "done sexual abuse stuff to you." S.B. said a family friend, E.L., abused her when she was about six years old.

2. *S.B.'s February 2018 Allegations of Sexual Abuse by Maternal Step-grandfather*

In January 2018, S.B. told a CSW about an incident that happened sometime "last year" when she was at her maternal grandmother's home. She was on her way to the bathroom when her maternal step-grandfather, A.M., grabbed her hand, and took her to his room. He put his hand under her clothes and touched her vagina. He showed her his penis. He held her arms so she could not run away, and she kicked him. He put her on the bed and put his penis in her vagina. Afterward, she went to the bathroom because she was bleeding "a lot." She did not tell anyone what happened. She said that was the first time it happened; A.M. continued to do it about once a month. He told

her not to tell anyone. When he heard about her allegations against Father, he stopped doing it.

3. *S.B.'s March 2018 Allegations of Sexual Abuse by Group Home Employee*

On March 5, 2018, S.B. was placed in a psychiatric hospital after she was caught at school cutting her arm with a safety pin. A CSW spoke to S.B., who said she did not want to return to Five Acres; she would rather go to another group home.

The CSW spoke to a nurse at the hospital. The nurse said that S.B. told her she did not want to return to Five Acres because a staff member had touched her vaginal area beneath her clothing. On March 20, 2018, S.B. reported to a sheriff's deputy that one evening she was walking outside at Five Acres when someone tapped her on the shoulder. She recognized the person as a staff member. He told S.B. to be quiet; he then reached into her pants and touched her vagina.

The CSW interviewed the staff member, who stated that the allegations were false; he had never been alone with S.B. He said there were cameras all over the Five Acres campus, and footage from these cameras would show the allegations were false.

S.B. initially told the CSW that the incident happened behind the CIS building. When a Five Acres counselor told S.B. "that there were cameras behind the CIS building and throughout the campus, [S.B.] changed the location of the incident to three other locations." Additionally, S.B. said that the incident occurred on a Sunday evening in February, but the staff member did not work Sundays in February. Five Acres reassigned him, so he would have no contact with S.B. Based on

the inconsistencies in S.B.'s statements regarding the incident, the CSW was not certain of S.B.'s credibility.

DCFS filed a last minute report, indicating that S.B. had reported sexual abuse by Father, non-related extended family member E.L., and A.M. Again, DCFS stated that S.B.'s allegations of sexual abuse against Father appeared to be credible.

On May 3, 2018, DCFS requested a protective custody warrant after S.B. and two other residents of Five Acres ran away from school; the court granted the request. CSWs located S.B. at Mother's home, and S.B. was returned to the group home without incident. On May 25, a counselor reported that S.B. said she ran away because she did not want to be at Five Acres. Additionally, S.B. "recanted sexual abuse allegations" against the staff member, "stating she did not want to return to Five Acres."

D. August 2018 Adjudication Hearing

1. A.B.'s Testimony

A.B. and S.B. testified at the adjudication hearing, which began on August 27, 2018. A.B. testified that one day when he was six years old, he walked into Mother's room and saw Father talking to S.B. and then spanking her. A.B. remembered speaking with the social worker, but did not remember telling the social worker that he saw Father touching S.B. Although A.B. said no one told him what to say, he related that he had discussed testifying with Mother and his brothers; Mother told him to be careful about what he told the court and his brothers told him to "make sure everything is right." A.B. missed Father and S.B. and wanted them to come home. He was worried, though, that if they both came home, they would fight.

On cross-examination, A.B. testified that he could not remember telling a social worker that one time he heard S.B. crying and saw Father touching her private parts.

2. *S.B.'s Testimony*

S.B., who was 13 years old at the time of the hearing, testified that the first time Father touched her sexually was in 2016 when she was 11 years old. She told her friends, who told a teacher. When she got home, Mother asked why she did not tell her about it. Mother told her if she said something, the family would get torn apart. When the CSW came to the house in 2016, S.B. did not agree to an interview because she was afraid that her family would be separated if she spoke to the CSW.

According to S.B., shortly after the CSW came to the house, Father began abusing her again; he touched her breasts and her vagina, both under and over her clothing. On one occasion, Father put his penis in S.B.'s vagina. Additionally, more than once—but less than ten times—Father put his finger inside of her. Father told S.B. not to scream and not to tell anybody because Mother would be hurt if S.B. reported it.

S.B. testified that she originally regretted telling the truth because she wanted to go home with Mother and felt like she was being punished. She no longer regretted the truth because she was trying to keep herself safe from Father. She missed her family, however. S.B. also conceded that some of the allegations she made about her step-grandfather, A.M., were not accurate. She denied that A.M. abused her, but related that he exposed himself to her and showed her pornography on his cell phone. Regarding the Five Acres staff member, S.B. acknowledged that her accusation against him was untrue and stated that she

accused him because she did not want to go back to Five Acres. She testified that she was sorry, and said it was “a huge mistake” and “felt bad” and “really want[ed] to take it back.”

S.B. denied making up her claims of sexual abuse against Father.

3. *The Juvenile Court’s Ruling*

DCFS, S.B.’s counsel, and S.B.’s seven-year-old brother, A.B.’s counsel urged the court to sustain the findings alleged in the petition. Father’s counsel argued that DCFS failed to meet its burden of proving the allegations of the petition true. Discussing S.B.’s accusations and the surrounding circumstances, counsel argued that S.B. was not credible. Counsel additionally pointed out that A.B.’s testimony did not corroborate S.B.’s accusations. Counsel added that “[w]hat has been consistent in this case, your honor, is all the family members’ denials that [Father] has abused this child.”

After argument by all counsel, the court stated it would take the matter under submission. In its later ruling, the court stated that “this is a challenging case, very difficult case. A number of factors to consider in reaching a decision.” The court reviewed the reports and interview transcripts “multiple times.” It noted that “one of the biggest challenges in this case was attaching appropriate weight and credibility to the words of [S.B]. Notwithstanding some fabrications that she made, there’s a thread of consistency running through her reports, notwithstanding her admitted fabrications and recantations surrounding previous reports of sexual abuse. And that consistent thread is of the circumstances of the being in the

parents' room, Father entering the room, tickling, touching over the clothes and under the clothes."

The court admitted that it "struggled trying to determine if these allegations were fabricated, what would be the motivation." The court observed that in other cases children sometimes fabricate abuse allegations at the behest of the other parent, or because the child has an ax to grind with a parent or because the child wants to get away from home. The court, however, saw no motive in this case for S.B. to fabricate the allegations against Father. The court observed that "[i]n this case, in reviewing the discovery including the forensic interview, the child wanted to be home. In fact, . . . she felt bad that she was unable to be home, and she faulted herself for making the disclosures which ended up in the family being torn apart."

The court acknowledged there were "some glaring inconsistencies" in S.B.'s reports of Father's conduct. A.B., however, provided corroborating evidence of S.B.'s claim that Father touched her. The court noted that A.B. "clammed up when he testified, but that's not unusual for a little boy who has seen his family torn apart in the last year. And as reported in the jurisdiction report, the details he provided support[] the details provided by [S.B]. It gives credence. Without that, I'd be forced to use in its entirety [S.B.'s] reports of what occurred and knowing that [S.B.] has admittedly made false allegations against another individual. So the court, however, finds that there is [a] lack of motivation for [S.B.] to . . . simply make up these egregious allegations against her father."

The court, therefore, found the allegations in counts b-1, d-1, and j-1 to be true. It found insufficient evidence to support the allegations in count c-1 and dismissed that count. It found

the children to be persons described by section 300, subdivisions (b), (d), and (j).

At the disposition hearing on September 14, 2018, the court declared the children to be dependents of the court. It ordered S.B. removed from her parents' custody and care and suitably placed under DCFS supervision. It ordered monitored visitation for Mother; it ordered monitored visitation in a therapeutic setting for Father, "only at [S.B.'s] request." The court ordered the four boys released to the parents' home under DCFS supervision.

Father and Mother timely appeal.

DISCUSSION

Father contends there is no substantial evidence to support the juvenile court's jurisdictional findings.⁶ According to Father, "the juvenile court acknowledged [S.B.'s] lack of credibility but still credited her claims." Given the governing appellate standard of review and the record before us, we conclude that the Father has not demonstrated reversible error.

A. Standard of Review

Our review of the juvenile court's jurisdictional findings and dispositional orders is subject to the substantial evidence standard. "Under this standard '[w]e review the record to determine whether there is any substantial evidence to support the juvenile court's conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the

⁶ In her opening brief, Mother joined in Father's arguments.

court's orders, if possible.' [Citations.]" (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.) The appellant bears the burden of demonstrating that there is no substantial evidence to support the findings and orders. (*In re M.R.* (2017) 8 Cal.App.5th 101, 108.) In assessing whether there is substantial evidence to support the lower court's findings, we cannot reject evidence accepted by the trial court as true unless it is physically impossible or its falsity is obvious without resort to inference or deduction. (*DiPirro v. Bondo Corp.* (2007) 153 Cal.App.4th 150, 195.) Not " 'even testimony which is subject to justifiable suspicion . . . justif[ies] the reversal of a judgment, for it is the exclusive province of the trial judge . . . to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.' " (*Evje v. City Title Ins. Co.* (1953) 120 Cal.App.2d 488, 492; accord, *In re S.A.* (2010) 182 Cal.App.4th 1128, 1149.) The court may reject evidence only if it is " "so inherently improbable and impossible of belief as in effect to constitute no evidence at all" ' " (*People v. Maxwell* (1979) 94 Cal.App.3d 562, 577), i.e., if it is " 'unbelievable *per se*,' " physically impossible or " 'wholly unacceptable to reasonable minds' " (*Evje, supra*, at p. 492; accord, *In re S.A., supra*, at p. 1149).

B. Substantial Evidence Supports the Jurisdictional Findings

The appellate record reveals that the juvenile dependency court's approach, in this case, was careful and deliberate. The court weighed and considered the conflicting and inconsistent evidence before it, reviewed the documentary evidence multiple times, actively engaged in the contested hearing, and considered

the matter for several days before announcing the ruling. The court's comments about S.B.'s demeanor, testimony, and lack of motive to fabricate the allegations against Father reflect the court's knowledge of the evidence and prior experience in dealing with other cases involving sexual allegations. Likewise the court's consideration of A.B.'s evidence reflects the court's effort to reconcile A.B.'s statements to the social worker, which corroborated some of S.B.'s allegations, with A.B.'s lack of recall during the hearing.

As the juvenile court acknowledged, there were inconsistencies in S.B.'s statements. She acknowledged lying on more than one occasion. The juvenile court had questions as to her credibility. Nonetheless, the ultimate determination as to S.B.'s credibility, and what portion of her testimony and statements were credible, and how to weigh that evidence against other contrary evidence was for the juvenile court to make. This court "neither reweigh[s] the evidence nor reevaluate[s] the credibility of witnesses." (*People v. Jennings* (2010) 50 Cal.4th 616, 638.)

Certainly, S.B.'s statements and testimony were subject to justifiable suspicion. The juvenile court found, however, "a thread of consistency running through her reports, notwithstanding her admitted fabrications and recantations surrounding previous reports of sexual abuse. And that consistent thread is of the circumstances of the being in the parents' room, Father entering the room, tickling, touching over the clothes and under the clothes" on her chest and vaginal area. In our view, the court's determination, based on its assessment of all of the evidence, is neither physically impossible nor obviously false. (*In re Ana C.* (2012) 204 Cal.App.4th 1317, 1329.)

Attacking the sufficiency of the evidence supporting the juvenile court's finding, Father relies on *In re I.C.* (2018) 4 Cal.5th 869. His reliance is misplaced. In *I.C.*, the court was called upon to determine whether "certain uncorroborated hearsay statements made by a three-year-old child provided a sufficient basis to determine that she had been sexually abused by her father. Although the juvenile court found the statements to be unclear, confusing, not credible, and unreliable in significant respects, it ultimately concluded that the indicia of the statements' reliability outweighed the indicia of unreliability." (*Id.* at pp. 875-876.) The Supreme Court found the juvenile court erred in relying solely on the child's statements where "the record supplie[d] no adequate basis to support an implied finding[] that the child's statements bore special indicia of reliability." (*Id.* at p. 896.)

In *I.C.*, the court was dealing with hearsay statements by a " 'truth incompetent' " young child who was " 'insulated from cross-examination.' " (*In re I.C.*, *supra*, 4 Cal.5th at p. 889.) Here, S.B. was competent to testify, did testify, and was subject to cross-examination. She acknowledged that some of her previous statements were lies. The juvenile court's findings were not based solely on an uncorroborated hearsay statement by a child who was "too young to separate truth from falsehood." (*Id.* at p. 875.)

In addition, S.B.'s claims were substantiated, in part, by the detailed statement that A.B. made to the social worker early in the investigation.

Because substantial evidence supports the trial court's findings, we affirm.⁷

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

WEINGART, J.*

⁷ We need not address the contention that the dispositional orders must be reversed. This contention is based solely on Father's claim that there is no substantial evidence to support the jurisdictional findings. (*In re Isabella F.* (2014) 226 Cal.App.4th 128, 141 [reversal of jurisdictional findings requires reversal of dispositional order].) With no other challenge to the dispositional orders, we find no grounds for reversal.

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