

Filed 5/24/18 In re Paige S. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re PAIGE S., a Person Coming  
Under the Juvenile Court Law.

B286210

(Los Angeles County  
Super. Ct. No. DK23446)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

LISA S.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles  
County. Philip Soto, Judge. Affirmed.

Cristina Sanchez, appointed by the Court of Appeal, for  
Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,  
Assistant County Counsel, Sally Son, Deputy County Counsel, for  
Plaintiff and Respondent.

\* \* \* \* \*

Lisa S. (mother) appeals the juvenile court's orders exerting dependency jurisdiction over her daughter Paige S. (Paige) and removing Paige from her custody, and argues that neither order is supported by substantial evidence. We conclude to the contrary, and affirm.

## **FACTS AND PROCEDURAL BACKGROUND**

### **I. Facts**

Paige was born in January 2015 to mother and an unknown man.<sup>1</sup>

By 2017, mother was dating Jon S. (Jon). At that time, mother and Paige were living with the maternal grandmother, and Jon “stayed” with them “periodically.” The grandmother was elderly and suffered from Parkinson’s, polio, and Grave’s disease.

Jon would regularly yell at mother, at the grandmother, and at Paige herself. He was “verbally mean” to Paige and would talk to her “harshly.” He would often cuss. He once told a social worker who was visiting to check on Paige that the social worker’s “mom was a crack hoe and suck dick [*sic*] for dollars” and that her “dad used to beat [her] mom.” He once threatened the grandmother that he was “going to destroy [her] family.”

Jon would also get physical. He would throw candy and other small items at the grandmother while they argued. During one incident, he flipped over a chair. During another, he spit on the grandmother. Jon also landed blows: Mother had bruises, the grandmother reported to her landlord that Jon had hit her,

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<sup>1</sup> Mother has two other children who live with their father and are not part of this case.

and Jon had yanked on Paige's arm, "whop[ped] her on the butt," and freely admitted to having slapped her on the hand and butt.

Paige was present during some, though not all, of these verbal and physical outbursts.

During this timeframe, mother smoked marijuana to alleviate headaches and pain in her "joints" and says she had a medical marijuana card. Mother smoked outside the apartment, leaving Paige in her grandmother's care. Grandmother's ailments meant that she could not cook for herself, bathe herself, dial a phone, or lift or carry a child; grandmother's part-time caretakers did not believe the grandmother could capably care for a toddler like Paige. Mother tested positive for marijuana, and was a "no show" for at least four scheduled testings in May through July 2017.

## **II. Procedural Background**

In June 2017, the Los Angeles County Department of Children and Family Services (Department) filed a petition asking the juvenile court to exert jurisdiction over Paige on two grounds: (1) mother "has a history of substance abuse and is a current abuser of marijuana," which renders her "incapable of providing regular care and supervision" of Paige and thus places Paige at "substantial risk" of "suffer[ing] serious physical harm" (making jurisdiction appropriate under Welfare and Institutions Code section 300, subdivision (b)(1))<sup>2</sup> and (2) mother and Jon have "a history of violent and assaultive behavior[] in the presence of" Paige, which constitutes a "fail[ure] to protect the child" and places Paige at "substantial risk" of "suffer[ing] serious

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<sup>2</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

physical harm” (also making jurisdiction appropriate under section 300, subdivision (b)(1)).

The juvenile court held a jurisdictional and dispositional hearing in August 2017. At that hearing, the parties stipulated that the grandmother would testify that Jon only “threw small items at her such as candy” and that “Paige was in the other room when he threw things.” They also stipulated that mother would testify that Jon only “stayed” at mother’s apartment “periodically.” The juvenile court did not “believe this story that [Jon is] just throwing candy and little things. That’s not what the paperwork said. He’s dangerous. He’s aggressive.” The court accordingly found sufficient evidence to sustain both allegations supporting dependency jurisdiction and ordered Paige removed from mother.

Mother filed a timely notice of appeal.

## **DISCUSSION**

Mother challenges the sufficiency of the evidence supporting the juvenile court’s assertion of dependency jurisdiction and its order removing Paige from her custody.

### **I. Jurisdiction**

As noted above, the juvenile court exerted dependency jurisdiction over Paige on two grounds: (1) mother’s substance abuse, and (2) Paige’s exposure to domestic violence. Mother attacks the sufficiency of the evidence underlying each ground. Because, as explained below, substantial evidence supports jurisdiction on the second basis, we need not—and do not—assess the sufficiency of the evidence supporting the first basis. (*In re Ashley B.* (2011) 202 Cal.App.4th 968, 979 [“As long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate”].)

We review a parent’s challenge to jurisdiction on these bases for substantial evidence, asking whether the record contains evidence that is reasonable, credible, and of solid value sufficient for a reasonable trier of fact to make its orders. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) In so doing, we consider the record as a whole, and resolve all conflicts and draw all reasonable inferences to support the juvenile court’s findings; we may not reweigh the evidence or gainsay its credibility findings. (*Ibid.*; *In re Lana S.* (2012) 207 Cal.App.4th 94, 103.)

Under section 300, subdivision (b)(1), a juvenile court may exert dependency jurisdiction if, as pertinent here, a “child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness” due to “the failure or inability of . . . [the] parent . . . to adequately supervise or protect” her. (§ 300, subd. (b)(1).) A child’s exposure to domestic violence places that child at risk within the meaning of subdivision (b)(1) of section 300 (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194-195), particularly where there is a likelihood of recurrence (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717; cf. *In re J.N.* (2010) 181 Cal.App.4th 1010, 1025-1027 [single incident insufficient]).

Substantial evidence supports the juvenile court’s finding that Paige’s exposure to Jon’s verbal and physical abuse against mother and grandmother placed Paige at substantial risk of serious physical harm. Jon’s aggressive and violent behavior has been steadily escalating—from verbal assaults, to throwing smaller objects, to “flipping” larger objects, to spitting, and to slapping and hitting. Although not all of his conduct occurred in Paige’s presence, some of it did, and thus some of it placed Paige in harm’s way of Jon’s increasingly violent outbursts. What is more, mother was still in a relationship with Jon at the time of

the jurisdictional and dispositional hearing, such that the risk of violence—and the consequent risk of serious physical harm to Paige—remained substantial. The fact that Paige had yet to be physically hurt in the proverbial crossfire between Jon, mother, and grandmother is of no consequence. (E.g., *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383; *In re Yolanda L.* (2017) 7 Cal.App.5th 987, 993.)

Mother contends that Jon’s acts of physical violence were, as yet, relatively timid—so far, just throwing candy and spitting. The juvenile court rejected mother’s and grandmother’s testimony on this point as not credible in light of evidence that Jon also “flipped” chairs and struck mother, grandmother, and Paige. We defer to this credibility finding. And even if Jon’s conduct *had* been so limited, the evidence shows that his behavior was getting more and more aggressive and dangerous; as noted above, the juvenile court need not wait for domestic violence to ripen into a full-blown beating if the child is nevertheless put in harm’s way. Paige was.

## **II. Removal**

A juvenile court may remove a child from her parent 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, 809 [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 Paige 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 Paige is at substantial risk of serious physical harm. The ever increasing flare ups of violence between Jon, mother, and grandmother despite the proximity of Paige, coupled with the ongoing nature of mother's and Jon's relationship, provides a sufficient basis to conclude, by clear and convincing evidence, that returning Paige to mother's custody would be dangerous. Substantial evidence also supports the finding that no reasonable means short of removal would protect Paige. Mother continues to date Jon and denies or minimizes the fact that she, Jon, and grandmother engage in any domestic violence. Such denial itself makes mother less open to the "treatment necessary to effect behavioral changes to [e]nsure the minor will not be [at] risk if placed in [her] custody." (*In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044.)

**DISPOSITION**

The orders are affirmed.

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\_\_\_\_\_, J.  
HOFFSTADT

We concur:

\_\_\_\_\_, P. J.  
LUI

\_\_\_\_\_, J.  
CHAVEZ