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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re DAMIEN O., a Person Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent.

v.

DIANA M.,

Defendant and Appellant.

B241794

(Los Angeles County
Super. Ct. No. CK86653)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Veronica S. McBeth, Judge. Affirmed.

Janette Freeman Cochran, under appointment by the Court of Appeal, for
Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and
Kim Nemoy, Deputy County Counsel for Plaintiff and Respondent.

Diana M. (mother) appeals from a judgment declaring her son Damien O. (born December 2010) a dependent of the juvenile court pursuant to Welfare & Institutions Code section 360, subdivision (d).¹ Specifically, mother argues that there was no substantial evidence to support the findings as to mother under section 300. In addition, mother argues that the trial court abused its discretion when it required that mother remain in her sister's home as a condition of its home of parent order. We find no error and affirm the judgment in full.

COMBINED STATEMENT OF THE CASE AND FACTS

1. Initiation of dependency proceedings

On February 14, 2011, the family came to the attention of the Los Angeles Department of Children and Family Services (DCFS) after Damien's half-brother, three-year-old Isiah (born April 2007), was rushed to the hospital with brain swelling that required surgery. During surgery, doctors discovered massive bleeding and swelling in the brain, as well as retinal hemorrhages. Isiah died from his injuries on February 17, 2011, and is not a subject of this appeal.²

Isiah's injury occurred at the home of mother's boyfriend, Jose O. (father), who is the father of Damien.³ Mother stated that she, Damien and Isiah were living at father's home. At the time that Isiah was injured, mother had left to get food for the family. She took Damien with her, but left Isiah in father's care. While she was out, father called her and told her to return quickly because something had happened to Isiah. When she arrived home, Isiah was in the driveway, lying on the concrete. After a few minutes, paramedics arrived. They would not allow her to ride in the ambulance with the child, but relatives took her to the hospital.

¹ All further statutory references are to the Welfare & Institutions Code unless otherwise noted.

² Isiah's father lives in the Sacramento area and had very little contact with the family. He is not a party to this matter.

³ Father is not a party to this appeal.

When asked what father had told her about the incident, mother stated that father said that Isiah had been jumping on the bed. Father stepped out to use the bathroom, and when he returned, Isiah was lying on the floor and “acting weird.” Mother denied that anything like this had ever happened before. She denied any other accidents, injuries, or trips to the hospital. She stated that Isiah was a healthy child and that the parents did not use physical discipline.

Father was also interviewed. Father was described as a very large man with many tattoos, including a tattoo that says “5150” over his left eyebrow. He stated that he is employed as a merchandiser for the Coca Cola Company and that he works various shifts. Father explained that he arrived home from work and mother went to get some food. Isiah woke up from a nap and the two started watching a DVD. When Isiah was playing on the bed, father stepped out to use the bathroom. When he returned to the bedroom, the child was lying on the floor, crying softly and “twitching.” Father panicked, picked up the child and ran to the kitchen, where he handed the child to his father. He attempted to call 911 but could not get any reception in the house. He went outside and called again, then handed the phone to his sister, Jessica O. (age 19), who spoke with the 911 operator. The family took the child outside because they have a neighbor who knows CPR. The neighbor advised them that the child was breathing. A few minutes later the paramedics came and took Isiah to the hospital.

Father denied ever physically disciplining Isiah, except for spanking him once. He described the child as “hyper.” Father denied engaging in any domestic violence, having any mental health issues, or using drugs. He admitted he was arrested when he was 18 years old for possession of a firearm, but denied that there were any weapons in his home. Father stated that the “5150” tattoo on his forehead meant “psycho.”⁴ He also had a tattoo that said “sick” on his hand.

Isiah’s attending physician in the pediatric intensive care unit stated that Isiah had a severe brain hemorrhage, brain swelling, and massive bleeding in the brain. At the time

⁴ Welfare & Institutions Code section 5150 concerns those with a mental disorder.

of the interview, Isiah had almost no brain functioning. There was soft tissue swelling in the back of Isiah's head, which suggested blunt force trauma. Isiah also had retinal bleeding in both eyes. Dr. Markovitz stated that he could not determine when the injury had occurred, but that it was very rare to see retinal bleeding in children who have fallen and hit their heads. Dr. Markovitz opined that the explanation given by father was not consistent with the injuries, and that he was highly suspicious of physical abuse.

Damien was examined and found to be in good health with no signs of abuse or neglect. A full skeletal survey was performed, and the results were normal.

While the investigation was pending, DCFS placed Damien in the temporary custody of maternal aunt, Rodsana D., who lived with her husband and 12-year-old son.

Detective Castillo of the Los Angeles Police Department interviewed some family members who were present at the time of Isiah's injuries, and no one reported hearing anything from the bedroom. When the detective scanned the bedroom, he saw nothing out of place. He did take some weights that were on the floor, and stated that he would have them tested for the possibility that the child hit his head on the weights.

When the DCFS social worker viewed the home, she noted it was clean and well kept, except that the bedroom shared by mother, father and the children had walls and furniture covered with graffiti or "tagging." The bed was only three feet from the thinly carpeted floor. Damien slept in a crib in the bedroom.

On February 17, 2011, DCFS filed a section 300 petition on behalf of Isiah and Damien. However, Isiah died the same day. DCFS amended the petition, naming only Damien. At the detention hearing, the court detained Damien with the maternal aunt and ordered monitored visits for both parents. Mother was ordered to enroll in parenting classes and individual counseling.

2. Jurisdiction/disposition

DCFS submitted a jurisdiction/disposition report on March 21, 2011. Damien remained placed with maternal aunt. The parties had been re-interviewed. Mother reiterated what she previously stated. Even though she had been informed that Isiah's injuries could not have been the result of a fall, mother insisted that the injuries must

have been accidental and could not have been the result of abuse. Mother explained that she was very close with Isiah, and he would tell her if father hit him. She described Isiah as “hyper, a dare devil, he would jump off things.” Mother insisted that father had a good relationship with Isiah, and when father would get frustrated with the child, he would leave the room.

Dr. Michelle Elmore performed a bone survey of Isiah and found an “[e]xtremely large right frontoparietal craniotomy with marked soft tissue swelling.” A medical report verified by Dr. John Grimm indicated that there were “[b]ilateral frontal subdural hematomas,” along with a [l]eft parietal scalp hematoma with a likely underlying nondisplaced fracture of the left parietal bone.” An ophthalmology consultation revealed diffuse intraretinal hemorrhages in both eyes. The “Brain Death Exam Report” indicated that the child “suffered a closed head injury resulting in a nondisplaced skull fracture and severe intracranial hemorrhage.”

A supplemental police report described a follow up investigation that took place on February 15, 2011. It was confirmed that Isiah’s head injuries were very severe, were inconsistent with father’s account of events, and appeared to be nonaccidental. Police conducted a follow up at father’s home residence. Police observed the “enormous amount of graffiti across the walls, dressers, and closet doors” in the parents’ bedroom. They also observed “several holes in the walls and the entrance door, which appeared to be made with a fist or foot.”⁵

Surveillance tapes confirmed mother’s presence at the two restaurants from which mother stated that she bought food. Mother explained that she and father’s sister Jessica took Damien and Jessica’s five-month-old son Anthony to Yoshinoya. Mother had an EBT card for Yoshinoya. Father told mother that he did not want Yoshinoya, and she offered to get him some Burger King. Mother told Isiah that it was nap time and Isiah went down without resisting. She placed him on a blanket on the floor in the parents’

⁵ Father later admitted that about six months previously, he had gotten angry and punched the wall and the door with his fist. He stated that he was “having a bad day.”

bedroom. Father was on the bed. As she was leaving, mother noted that Isiah was lying down but was not sleeping.

Mother and Jessica and the babies then went to Yoshinoya. They took the babies out of the car and ordered food, but then mother realized that she forgot her EBT card. She told the cashier she was sorry and they walked out of Yoshinoya. When she arrived home to retrieve her EBT card, she noticed that Isiah was sleeping. She stated that he was breathing normally and looked fine. Father was in the same spot on the bed.

Mother took Damien back to Yoshinoya. Jessica decided to remain at home. Mother went into the restaurant and ordered the food. As she was heading out the door from Yoshinoya, father called her and asked her where she was. She informed him that she was headed home. The call lasted about nine seconds. Father then called a second time and told mother to hurry up because something had happened to Isiah. She told him she was hurrying. Father sounded worried and panicked. Mother missed another call from father, and he called her a fourth time as she was pulling up to the house. She observed Isiah lying in the driveway, with their neighbor, Jessica and father. Mother did not notice any injuries to Isiah's head or body.

Mother stated that she would never cover for father if he had done something to her son. When asked about the holes in the wall of the bedroom, mother stated that the holes were there before she moved in.

Mother informed DCFS that she ended her relationship with father after Isiah's death and wanted to reunify with Damien. Mother had enrolled in parenting classes and had made an appointment for individual counseling. Mother was visiting Damien daily and the visits were appropriate.

At the March 30, 2011 hearing, DCFS requested more time to make a recommendation regarding the case. The court continued the matter as father needed an attorney appointed for him. The court denied mother's request that Damien be released to her, but permitted unmonitored visits in the home of the caretaker, with overnight visits permitted. The court ordered DCFS to provide a supplemental report addressing the release of the child to mother.

On May 10, 2011, DCFS reported that mother was now residing with a cousin. Mother stated that she had not had contact with father since two days after Isiah's death. She stated that she would do anything to have Damien returned to her and would abide by all court orders, including restrictions regarding father's visits. Mother attended eight parenting classes and began individual therapy in June 2011. DCFS did not recommend returning Damien to mother because it lacked information from her therapist. In addition, DCFS was waiting for the coroner's report, which would take eight weeks. On May 11, 2011, the court set trial for July 27, 2011. Mother again asked for the court to release Damien to her custody, but the court denied the request, stating that the prior orders would stand with DCFS discretion to liberalize.

In a report submitted on July 27, 2011, DCFS described the results of Isiah's autopsy, conducted by Dr. Whiteman. Dr. Whiteman stated that Isiah's head trauma was inconsistent with a fall from a bed, even onto a concrete floor or a dumbbell. Just by looking at the head, Dr. Whiteman believed that Isiah was likely thrown, punched, or kicked, and that the injury was caused by blunt force trauma. The head injury was so severe, the doctor had only seen similar injuries from car accidents or falls from a two- or three-story building -- and even those were not as severe as the injuries Isiah suffered. Isiah also sustained hemorrhaging on the optic nerve, likely caused by violent shaking or being violently thrown. Dr. Whiteman concluded that the injuries were nonaccidental trauma, and the mode of death was homicide.

Medical expert Dr. Imagawa indicated that the head injury was likely acute and could have occurred when mother was out buying food. The child's symptoms would have been immediate. Another expert, Dr. Heger, agreed, stating that Isiah suffered two types of injuries: a contact injury, which caused the hematomas in his head; and a rotational/shaking injury which caused the eye bleeds, rapid onset of symptoms, and death.

On October 20, 2011, mother's therapist confirmed by letter that mother had attended all of her therapy sessions and was processing her grief and loss issues related to her child. The therapist was confident that mother had had no contact with father.

Mother admitted that Isiah had been harmed while in father's care but could not yet articulate what caused the death of Isiah.

Maternal aunt confirmed that mother spent a lot of time with Damien. Mother stayed with Damien and attended to him every evening, and spent every other night with Damien at her home. Visits between mother and Damien were positive. Eventually, mother moved into the aunt's home and was granted unmonitored contact with Damien both in and out of the home.

On November 29, 2011, father was charged with one count of murder and one count of assault on a child causing death. On December 8, 2011, father was arrested for these crimes.

3. Adjudication

On May 3, 2012, the juvenile court adjudicated the matter. It received into evidence the DCFS reports as well as mother's therapist's report. Mother moved to dismiss the allegations against her for lack of sufficient evidence. Damien's attorney joined mother's arguments and asked that the court strike mother from the petition. Damien's attorney argued that the court had sufficient evidence to sustain the petition against father. DCFS asked that the court sustain the petition as written.

The court sustained an amended petition under section 300, subdivisions (a), (b), (f), and (j), finding that Isiah died from suspicious injuries while in father's custody, the types of injuries sustained were inconsistent with father's explanation of how the child was harmed and were consistent with nonaccidental trauma, and mother knew or should have known that father posed a risk to the child. The court made reference to father's tattoos and stated "everybody understands certain things." The court indicated that it had read through the evidence several times and believed mother "knew exactly the person she was living with." While the court did not believe that mother herself was a safety risk to her child, the court did not feel it was appropriate to strike mother from the petition.

The court released Damien to mother's custody on the condition that mother reside with the child in the aunt's home, and ordered that DCFS provide services to the family.

Mother made no objection to the order; the only objection was from DCFS, which favored retaining the child's current placement with the aunt and permitting mother to have unlimited access to the child. The court ordered no reunification services for father.

Mother filed a timely notice of appeal on May 18, 2012.

DISCUSSION

I. Jurisdiction is proper

Mother argues that the court lacked sufficient evidence to support its findings under section 300 as to mother. However, mother does not challenge the findings that the court made under section 300 as to father.

The sustained allegations against father bring Damien within the jurisdiction of the juvenile court. As long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate. (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72; *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875-876 (*Jonathan B.*))

As set forth in *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451:

“When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence. [Citations.]”

We will not reverse for error unless it appears reasonably probable that, absent the error, the appellant would have obtained a more favorable result. (*Jonathan B.*, *supra*, 5 Cal.App.4th at p. 876.) Because jurisdiction was proper on other grounds, mother cannot expect a more favorable result, and we need not consider her appeal.⁶

⁶ Mother cites *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1754 (*Blanca*), for the proposition that within the context of a section 300 petition, there is a great need for reliable findings by the trier of fact. In *Blanca*, four siblings were declared dependents of the court based on a petition initially charging excessive corporal punishment by their mother. A subsequent petition alleged that the father sexually

II. Substantial evidence supports the juvenile court’s decision to sustain counts (a), (b), (f), and (j) as written

We need not consider mother’s arguments as to the propriety of her inclusion in these counts, since jurisdiction of Damien was properly established. However, even if we were to consider mother’s arguments, they would fail.

The court’s jurisdictional findings are reviewed for substantial evidence. (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318-1319.) Evidence is substantial if it is reasonable, credible, and of solid value. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) We must examine the entire record, resolve all evidentiary conflicts in favor of the judgment and draw all reasonable inferences in support of the judgment. (*Ibid.*)

Mother challenges the juvenile court’s finding that mother “knew or should have known that the child’s father presented a risk of harm to the child’s sibling.” In addition, mother contests the finding that “mother’s neglectful act of leaving the child’s sibling with the father endangers the child [Damien’s] physical and emotional health and safety, placing the child at risk of physical and emotional harm, damage, danger and death.”

Mother acknowledges that in the recent case *In re Ethan C.* (2012) 54 Cal.4th 610 (*Ethan C.*), the California Supreme Court held that section 300, subdivision (f) allows the juvenile court to adjudge a child a dependent if it finds that the want of ordinary care by the child’s parent caused a child’s death. The father in that case, who failed to secure his

abused one of the children. At the hearing on the subsequent petition, the juvenile court indicated its belief that the truth of the sexual abuse allegations had already been established, although that was not accurate. (*Id.* at p. 1744.) An Evidence Code section 730 evaluation later exonerated the father of the sexual abuse charges. In recommending termination of reunification services, the social worker noted that the parents had refused to acknowledge that any sexual abuse had occurred. (*Blanca*, at p. 1747.) The juvenile court terminated reunification services, although the parents had otherwise complied with their reunification plans. On appeal, the court noted that the juvenile court’s mistaken impression about the status of the findings at the hearing on the subsequent petition mandated a reversal for rehearing. The present matter is distinguishable. The juvenile court was not under a mistaken impression that the allegations had previously been adjudicated. Instead, the court carefully considered the evidence and concluded that a true finding as to those allegations was warranted.

daughter in a child seat, argued that section 300, subdivision (f) required a finding of criminal negligence. The Supreme Court disagreed, concluding that “when a parent’s . . . negligence has led to the tragedy of a child’s *death*, the dependency court should have the power to intervene for the safety and protection of children remaining in the parent’s or guardian’s custody, even if the parent’s lethal carelessness cannot necessarily be characterized as sufficiently ‘gross,’ reckless, or culpable to be labeled ‘criminal.’” (*Ethan C.*, *supra*, at p. 636.) The *Ethan C.* court cited *In re A.M.* (2010) 187 Cal.App.4th 1380, in which the court discussed a father’s negligence when a child suffocated while sleeping between his parents. The Court of Appeal held that the juvenile court could properly have found that the father caused the baby’s death through ordinary neglect. (*Ethan C.*, at p. 631, citing *In re A.M.*, *supra*, at p. 1388.)

Mother attempts to distinguish these cases, arguing that they are not factually similar to the matter before us. She argues that her conduct was leaving Isiah with father and several paternal relatives when she left to get food for the family. She claims there is insufficient evidence to support a finding that she knew or should have known that leaving Isiah with father presented a risk of harm, or that leaving Isiah with father was neglectful. Mother claims she did not know of the risk of leaving Isiah with father.

The juvenile court appears to have considered mother’s position very carefully, noting that it read the evidence “over and over to try to ascertain what mother knew or should have known.” The court mentioned that it considered the tattoo that father had on his face that read “5150.” Father also had a tattoo on his hand that read “sick.” While father had no formal history of domestic violence or mental health issues, the juvenile court did not find the lack of official records of such incidents to excuse mother from an awareness of the type of behavior those tattoos suggested. In addition, there were holes in the walls and door of the parents’ bedroom, which father admitted to making with his fist after he had a bad day. One of the holes was covered with a picture, but the other was visible. While mother claimed she did not witness father’s violent acts of punching the walls, the juvenile court did not find this to be a satisfactory explanation of mother’s decision to ignore these clear signs of father’s propensity for violence. And finally,

mother could not have been unaware of the graffiti or “tagging” covering the walls in father’s bedroom. Such symbols can also suggest a propensity for violence.

A mother who is criminally innocent in causing the death of a child may properly be found to have failed to protect the child under section 300. (*In re Ethan N.* (2004) 122 Cal.App.4th 55, 61-62, 69.) Substantial evidence existed to support the juvenile court’s finding that mother knew, or should have known, that father presented a risk to Isiah.

III. The juvenile court did not err by requiring that mother remain in the home of her sister as a condition of its home of parent order

Although the court ordered Damien placed with mother, it conditioned that order on mother remaining in her sister’s home. Mother argues that such an order was error, since it required mother to remain in her sister’s home. In other words, mother argues, if mother moved out of her sister’s home, DCFS could detain Damien from mother.

Mother has forfeited this argument by failing to raise it in the trial court. “[A] reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not raised in the trial court. [Citation].” (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. omitted.) Dependency matters are not exempt from this rule. (*Ibid.*) The record reveals that mother did not object to the court’s dispositional order. The only objection came from DCFS, which objected to the “court making home of parent mother” order, and asked that the child remain suitably placed. Because mother failed to object to the order in the juvenile court, she may not present this issue on appeal. (See *In re Dakota S.* (2000) 85 Cal.App.4th 494, 502.)

In addition, mother has failed to convince us that the juvenile court erred. Disposition orders are generally reviewed for abuse of discretion. (See *In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474.) “‘The court has broad discretion to determine what would best serve and protect the child’s interests and to fashion a dispositional order in accord with this discretion. [Citations.]’” (*In re Alexis E., supra*, 171 Cal.App.4th at p. 454.) The court may make “any and all reasonable orders” to ameliorate the conditions that made the child subject to the court’s jurisdiction. (§ 362, subd. (a).) This provision and others in the Welfare & Institutions Code “have been broadly interpreted to authorize

a wide variety of remedial orders intended to protect the safety and well-being of dependent children [citation].” (*In re Carmen M.* (2006) 141 Cal.App.4th 478, 486.) The juvenile court must keep in mind the purpose of juvenile dependency law, which is “the preservation of the family as well as the safety, protection, and physical and emotional well-being of the child.” (§ 300.2.)

At a disposition hearing, the juvenile court has specific authority to declare dependency yet permit the child to remain at home with a parent, with limitations on the parent’s control and a requirement that services be provided. (Cal. Rules of Court, rule 5.695(a)(5) & (a)(6).)

Mother points to *In re Damonte A.* (1997) 57 Cal.App.4th 894 (*Damonte*). In that case, the mother challenged an order removing her children from her custody but allowing them to remain with her in a temporary placement. Mother contended that the order was invalid, as it permitted the Department of Health and Human Services (DHHS) to circumvent the requirements of section 361 and constituted improper delegation of the decision to remove the minors from the court to DHHS. The Court of Appeal agreed. After reviewing the statutory procedure for disposition of a dependent minor, the court stated that “[n]owhere in the statutes or rules is there authorization for the court to declare a dependency, order the dependent child removed from the physical custody of its parents, order the care, custody, control and conduct of the minor to be under the supervision of the probation officer and then direct the probation officer to temporarily place the minor back into the home from which it was removed.” (*Damonte, supra*, at p. 899.)

In contrast, here, Damien was not removed from mother. The court stated that its intention was “to remove from the father and we will place in the home of the mother as long as she resides with the maternal aunt.” The court also required “family preservation” in the form of “individual counseling” and “child protective issues.” Unlike the circumstances in *Damonte*, DCFS had no discretion to remove Damien from mother’s custody without petitioning the court to take such action.

No error occurred.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST