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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

B233350
(Los Angeles County
Super. Ct. No. CK77924)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

F.M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Elizabeth Kim, Judge. Affirmed.

Matthew I. Thue, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Melinda S. White-Svec, Deputy County Counsel, for Plaintiff and Respondent.

F.M. (mother) appeals the order of the juvenile court assuming jurisdiction over Y.M. and N.W. (collectively minors) due to risks posed by domestic violence. We find no error and affirm.

FACTS

Birth of the minors

Mother and E.W. (father) had Y.M., a boy, in 2000 and N.W., a girl, in 2008.

Father; domestic violence between mother and father

Father has been diagnosed with chronic paranoid schizophrenia and has a history of abusing alcohol, marijuana and cocaine.

He hit and shoved mother “off and on” during her first pregnancy. After Y.M. was born in 2000, father pulled a knife on mother in a parking lot outside of a shopping mall. In 2007, father rammed mother’s car with a utility truck. Then, in 2009, father pushed mother while she was carrying N.W. Mother threatened father’s life and father threatened mother’s life. Y.M. witnessed mother slapping father on at least one occasion.

The first dependency case

In July 2009, the juvenile court sustained a petition under Welfare and Institutions Code section 300, subdivision (b).¹ The petition alleged: “[Mother and father] have a history of domestic violence and engaging in violent altercations including the father physically attacking the mother while the mother was pregnant, pushing the mother while the mother was holding the child [N.W.], striking the mother’s car with the father’s car, and threatening to kill the mother. The mother threatened the father’s life. Such violent conduct on the part of the father against the mother endangers the [minors] physical . . . health and safety and places [them] at risk of physical . . . harm.” The minors were placed with a maternal aunt. Mother completed 20-week courses in parenting, domestic violence and anger management. In April 2010, the minors were placed in mother’s custody. The following October, the juvenile court terminated jurisdiction.

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

Kimberly S.; domestic violence between mother and Kimberly S.

Kimberly S. (Kimberly) has an extensive arrest history as well as a history of substance abuse.

Mother entered into a romantic relationship with Kimberly. In September 2010, police officers responded to a call of domestic violence. The police officers interviewed Kimberly, who stated the following: She was in pain and asked mother for a ride to the house where Kimberly's mother resides to retrieve pain medication. Upon arrival, mother became agitated and accused Kimberly of trying to end the relationship. Mother pushed Kimberly in the chest with an open palm and shouted, "You better not leave me!" Kimberly was embarrassed and fled into the house. Mother left but later returned and demanded her cell phone, which was in Kimberly's possession. Eventually, mother became enraged, ripped a screen off an open window, picked up a metal folding chair from the lawn and threw the chair at Kimberly through the window. The leg of the chair struck Kimberly's right elbow. Mother was arrested for cohabitant abuse in violation of Penal Code section 273.5. Reportedly, the minors were present during mother's altercation with Kimberly.

In November 2010, Kimberly entered mother's home and punched and choked her. When Y.M. tried to intervene, Kimberly choked him. His ear was lacerated in the melee.

The second dependency case

In April 2011, the Department of Children and Family Services (Department) filed a petition under section 300, subdivisions (a) and (b). It alleged that mother's November 13, 2010, altercation with Kimberly resulted in physical harm to Y.M., and that the history of violent altercations between mother and Kimberly placed the minors at risk of physical harm. The petition was sustained and the minors were placed with mother under Department supervision.

This timely appeal followed.

STANDARD OF REVIEW

We review jurisdictional orders under the substantial evidence standard. (*In re E.B.* (2010) 184 Cal.App.4th 568, 574 (*E.B.*).) Under this standard, we determine whether there is any substantial evidence, contradicted or uncontradicted, which supports the conclusion of the trier of fact. (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.) All evidentiary conflicts must be resolved in favor of the respondent. When there is more than one inference which can reasonably be deduced from the facts, we are without power to substitute our own deductions for those of the trier of fact. (*In re John V.* (1992) 5 Cal.App.4th 1201, 1212.)

DISCUSSION

Mother argues that the jurisdictional finding under section 300, subdivisions (a) and (b) must be reversed due to insufficiency of the evidence. If either count is sufficient to support jurisdiction, we must affirm. (*In re Dirk S.* (1993) 14 Cal.App.4th 1037, 1045.) As we discuss, we conclude that jurisdiction is supported under section 300, subdivision (b). In reaching that conclusion, we dismiss mother's contention that there was no evidence that the minors faced a current risk of serious physical harm at the time jurisdiction was exercised.

A child is a dependent under section 300, subdivision (b) if the "child has suffered, or there is a substantial risk that the child 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 child." The last sentence of the subdivision provides: "The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness." (§ 300, subd. (b).) Case law establishes that a petition filed under section 300, subdivision (b) must contain the following elements: "(1) neglectful conduct by the parent in one of the specified forms [i.e., the parent's failure or inability to adequately supervise or protect the child]; (2) causation; and (3) 'serious physical harm or illness' to the minor, or a 'substantial risk' of such harm or illness." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194 (*Heather A.*).)

The “consensus of the courts . . . has been that a court cannot exercise dependency jurisdiction under [section 300, subdivision (b)] where the evidence shows a lack of current risk. [Citations.]” (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1023 (*J.N.*), citing to *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 (*Rocco M.*), *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134, *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1395–1396 and *In re David M.* (2005) 134 Cal.App.4th 822, 829.) But then, in 2009, Division Seven of this District decided *In re J.K.* (2009) 174 Cal.App.4th 1426 (*J.K.*). The court held that jurisdiction under section 300, subdivision (b) may be “based on a prior incident of harm or a current or future risk.” (*J.K.*, *supra*, 174 Cal.App.4th at p. 1435, fn. 5, italics in original.) The court opted not to follow the holdings in cases such as *Rocco M.* on the grounds that it “derived its views concerning the future risk requirement from case law that considered the prior statutory scheme” that focused only on present unfitness of a home and the present needs of a child. (*J.K.*, *supra*, 174 Cal.App.4th at p. 1436.) Subsequently, *J.N.* disagreed with the analysis in *J.K.* because the last sentence in section 300, subdivision (b) requires immediate dismissal of a petition in the absence of future risk. (*J.N.*, *supra*, 181 Cal.App.4th at p. 1023.) Soon after, Division Three of this District cited *J.K.* and held that “proof of current risk of harm is not required to support the initial exercise of dependency jurisdiction under section 300, subdivision (b), which is satisfied by a showing the child *has suffered* or there is a substantial risk that the child will suffer, serious physical harm or abuse. [Citations.]” (*In re Adam D.* (2010) 183 Cal.App.4th 1250, 1261.) Thus, there is a split in the decisional authority regarding the necessity of a current risk of harm.

We need not weigh in on the issue. As we discuss, there is substantial evidence of a defined risk at the jurisdictional hearing.

Case law establishes that “domestic violence in the same household where children are living is neglect” that constitutes a failure to protect the children “from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.” (*Heather A.*, *supra*, 52 Cal.App.4th at p. 194.) This is so because children “could wander into the room where it was occurring and be accidentally hit by a

thrown object, by a fist, arm, foot, or leg, . . . ” (*Ibid.*) “‘Both common sense and expert opinion indicate [that] spousal abuse is detrimental to children.’ [Citations.]” (*E.B.*, *supra*, 184 Cal.App.4th at p. 576.) It is a form of secondary abuse. Children are affected by what happens around them as well as by direct harm. (*Heather A.*, *supra*, 52 Cal.App.4th at p. 195, fn. 11.) A substantial risk of mother being involved in domestic violence therefore supports jurisdiction.

As mother aptly notes, past conduct is not enough to demonstrate a current risk of harm. (*In re James R.* (2009) 176 Cal.App.4th 129, 136.) Instead, there “must be some reason beyond mere speculation to believe” that mother will once again be involved in a violent relationship. (*Ibid.*) There is. She was in a relationship with father for a decade or more even though he has a history of mental illness, substance abuse and domestic violence. Not only was mother a victim of father’s domestic violence for many years, she was a perpetrator, too. While in that relationship, she failed to protect the minors from the dangers of domestic violence. Then, after mother finished taking parenting, domestic violence and anger management classes but before the first dependency case was terminated, she entered into a romantic relationship with Kimberly, a person with a criminal past and substance abuse problems. Mother’s decision suggests that she did not learn anything from her classes. That mere suggestion becomes a certainty in the light of the incident in September 2010. Mother perpetrated multiple violent acts against Kimberly in the minors’ presence. That action, apparently, precipitated a violent response from Kimberly a few months later, a reaction that resulted in Y.M. being choked and lacerated. Her domestic violence with Kimberly during and just after the first dependency proceeding—which mother clearly did not disclose to the Department or juvenile court—gives rise to a powerful inference that violent dysfunction is so ingrained in mother that there is a substantial likelihood that it will reoccur absent additional services from the Department.

Mother tells us that there is no current risk from Kimberly because mother ended the relationship, obtained a restraining order and moved in with her sister so Kimberly cannot locate them. While that may be true, it does not eliminate the risk that mother will

repeat her pattern of violent relationships. She contends that any such risk is speculative. The inferences from the record suggest otherwise, and we are therefore powerless to second guess the juvenile court.

In re Steve W. (1990) 217 Cal.App.3d 10 (*Steve W.*) does not alter our view. The mother in that case had two successive relationships with violent men. The second one pushed her son, who then fell and hit his head on a coffee table. The child died and the second man went to prison. The juvenile court removed the mother's other son from her custody after making a finding under section 361 that there was clear and convincing evidence of a substantial danger of harm and that the other son could not be protected unless he was removed. (*Steve W.*, *supra*, 217 Cal.App.3d at p. 17.) On appeal, the court reversed the dispositional order. (*Id.* at p. 28.) It noted that the juvenile court's concern that the mother would enter a new relationship with yet another abusive person was speculative because, aside from her past, the evidence supported "a finding that she would not enter a relationship detrimental to [her son]. At the time of the hearing [the mother] had begun counseling, she was living in an adequate apartment and was self-supporting. There was no evidence that she was then involved in a relationship with anyone." (*Id.* at p. 22.)

We perceive no parallel to *Steve W.* Here, mother was a perpetrator as well as a victim of violence, which makes this case different in kind. Moreover, she entered a violent relationship after going to her classes. Whereas it was speculative to believe that the mother in *Steve W.* would enter an abusive relationship after she began counseling, here there is direct evidence in the form of mother's relationship with Kimberly that taking classes did not modify mother's behavior. Finally, *Steve W.* was a removal case, not a jurisdiction case.

Likewise, we are not persuaded by *In re Daisy H.* (2011) 192 Cal.App.4th 713 (*Daisy H.*). Two weeks after the mother and father signed a mediation agreement in a dissolution proceeding, an unidentified person reported that the father once choked the mother and pulled her hair. On another occasion, while speaking to his daughter, the father allegedly threatened to kill the mother. (*Id.* at p. 715.) The juvenile court

sustained a petition under section 300, subdivisions (a) and (b) and removed two children from their father's custody and placed them with their mother. After the father appealed, the juvenile court terminated its dependency jurisdiction and award joint legal and physical custody to the parents with physical custody shared pursuant to their mediation agreement. (*Daisy H.*, *supra*, at p. 716.) The court concluded that there was insufficient evidence that the children were at risk of physical harm because there was no evidence that the violence was ongoing or likely to continue. The record established that the choking and hair-pulling incidents occurred seven years before the petition was filed, and they did not occur in the children's presence. Because the parents were separated, there was no risk of ongoing violence.

Though mother states that "[t]his case is almost identical to [*Daisy H.*]," this statement is easily rejected. Mother was involved in two violent relationships, the first of which spanned at least a decade and the second of which occurred during a prior dependency case. As we stated before, mother was a perpetrator of violence as well as victim in those relationships. The violence was not isolated to a particular relationship and therefore the end of a particular relationship is not as salient as in *Daisy H.* Unlike in *Daisy H.*, the violence occurred in the presence of the minors and one of them, Y.M., was injured during the last incident. Thus, mother exhibited an ongoing pattern that makes her incomparable to the father in *Daisy H.*

All other issues raised by the parties are moot.

DISPOSITION

The jurisdictional order is affirmed.

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_____, J.
ASHMANN-GERST

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
CHAVEZ