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

In re Jack C., a Person Coming Under
the Juvenile Court Law.

2d Juv. No. B237685
(Super. Ct. No. JV49907)
(San Luis Obispo County)

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL
SERVICES,

Plaintiff and Respondent,

v.

HEATHER H.,

Defendant and Appellant.

Heather H. (mother) appeals the juvenile court's jurisdictional findings and orders declaring her son, J.C., to be a dependent child (Welf. & Inst. Code, §§ 300, subd. (b); 395, subd. (a)(1)).¹ Mother claims that the evidence is not sufficient to support

¹ All statutory references are to the Welfare and Institutions Code.

jurisdiction.² We affirm.

FACTS AND PROCEDURAL HISTORY

J.C. was born in February 2004. Mother did not marry his father, T.C.

On April 11, 2011, mother appeared in criminal court after her sister, K.H., filed misdemeanor battery charges against her. Mother began to "behave bizarrely," in court, and became increasingly agitated. The court remanded her into custody because it was concerned for her welfare. It also ordered an evaluation concerning her competency to stand trial. Child Welfare Services tried to locate J.C., as well as his father. J.C. was with an adult friend of mother's who was caring for him. Child Welfare Services later found J.C. and placed him in protective custody.

On April 13, 2011, the San Luis Obispo County Department of Social Services (DSS) filed a dependency petition. (§ 300, subd. (b).) Mother remained in custody and DSS could not locate father. DSS placed J.C. with his maternal aunt, K.H., and maternal grandparents. On April 14, 2011, the juvenile court ordered that J.C. be detained and authorized supervised visitation and reunification services for mother.

The May 18, 2011 jurisdiction report states that staff at J.C.'s school reported that he rode his bike to school alone, on a busy street. The report does not identify any school staff member by name. It states that in March 2011, J.C. arrived at school late and explained that he rode his bike to school alone because mother would not get out of bed.

² The jurisdictional order is not appealable, but may be challenged in an appeal from the dispositional order. (E.g., *In re Athena P.* (2002) 103 Cal.App.4th 617, 624.) Mother had challenged the dispositional orders removing J.C. from her care, and placing him with his maternal grandparents and aunt. Prior to oral argument, counsel advised us that because father died in June 2012, mother was withdrawing her arguments concerning the juvenile court's failure to place J.C. with father. During oral argument, mother's counsel conceded that because the juvenile court placed J.C. with mother in April 2012, her other arguments challenging the dispositional orders are moot. We review her remaining claim. (*In re Jennifer V.* (1988) 197 Cal.App.3d 1206, 1208-1210.)

The jurisdiction report also describes mother's inappropriate behavior. School staff advised DSS that mother demanded that the school allow J.C. to arrive late every day. Mother told a truancy officer that she did not have to follow his directives. During a school attendance review board meeting, upon learning that the case would be referred to the district attorney's office, mother became volatile and yelled, "[J.C.] is never coming back to school." After leaving the meeting room, she tried to reenter, found that the doors were locked, and struck a window. Thereafter, she left when directed to do so. Mother also pulled her pants to her ankles in the school cafeteria to show staff "what her sister did to her."

On June 8, 2011, the juvenile court conducted contested combined jurisdictional and dispositional proceedings. Heather Zickuhr, a DSS social worker, testified that she was concerned about mother's inappropriate behaviors and their effect on J.C., and his aggressive behavior toward other students. She was also concerned that mother violated a restraining order prohibiting her from contacting her sister; that she had not allowed the social worker to assess her home; and that she was losing her home. Zickuhr stated, "[J.C.] has reported when he has witnessed [mother] be[ing] violent or aggressive that he feels it's funny, so [she] believe[s] he needs treatment to help sort out what is appropriate behavior and what is not." J.C. also had exhibited "[p]retty severe aggression towards other students," caused injuries, and needed a "monitor . . . with him at every recess to control his behaviors."

The juvenile court reviewed the psychological reports which indicated that mother was competent to stand trial in criminal court. One psychologist wrote that she had a "personality disturbance that involve[d] impairment in emotional and interpersonal functioning, as well as a distorted view of situations and interactions." Another psychologist wrote that her "significant interpersonal and intrapersonal difficulties" made her "likely to act out toward others, especially when she [felt that she was] not in control." Her conduct and her personality traits made it "difficult for her to interact appropriately in the face of authority," such as personnel at her son's school.

On July 1, 2011, the juvenile court heard mother's testimony and received several exhibits, including mother's negative drug test results. J.C.'s counsel expressed concern that J.C. had been acting out aggressively and angrily, and that the family needed services. The court continued the matter to July 6, 2011, when it ruled as follows: "I think that [J.C.] is at risk, of substantial risk of not only physical harm but emotional harm as well based on the testimony of the mother, that she thinks it may be okay sometimes for a seven-year-old to ride his bike to school. And I have great concern about him being physically injured if she continues to believe that is okay. [¶] As far as the emotional harm, [J.C.] is already displaying very aggressive behavior. He's been suspended from school, and he's only seven years old. And she has not gotten him to school on time, nor has she gotten him to school consistently. [¶] Her behavior with school officials has been erratic to the point where they have called law enforcement, and she's been checked for drugs – for using drugs. [¶] [Mother] doesn't have a diagnosis of mental illness according to the doctor, but she has some ways of dealing with people that are so out of the norm, that they cause people to believe that she has a mental illness, and they want to have her checked out for that. [¶] So I don't know exactly what is going on, but I'm very concerned about the mother passing along her distaste for authority, whether it be the school, whether it be the social worker, or probably whether it be the court. I'm really worried about her passing on that kind of approach to life to [J.C.]. I think that could also be emotionally harmful." The court then explained it was sustaining the petition and declaring that J.C. was a dependent under section 300, subdivision (c) (failure to protect from emotional harm), as well as section 300, subdivision (b) (failure to protect from physical harm), even though the petition did not allege subdivision (c). Because mother wished to present additional evidence to contest the disposition, the court continued the matter for further proceedings.

The juvenile court conducted contested dispositional proceedings on August 24, 2011, and on September 30, 2011. On September 30, it ordered that J.C. be removed from mother, and remain in placement.

In its April 11, 2012 addendum report, DSS recommended that J.C. be returned to mother. At the close of the six-month review hearing on April 11, 2012, the juvenile court placed J.C. with mother.³

DISCUSSION

Mother contends that there is not sufficient evidence to support the court's jurisdictional findings that J.C. was a minor described in section 300, subdivisions (b) and (c). We conclude that substantial evidence supports the finding of jurisdiction under section 300, subdivision (c). However, we conclude that the section 300, subdivision (b) finding is not supported by substantial evidence.

"On appeal from an order making jurisdictional findings, we must uphold the court's findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings. [Citation.]" (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) A trial court's determination will not be disturbed unless it exceeds the bounds of reason. (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.)

Section 300 sets forth the grounds for dependency jurisdiction. The juvenile court declared that J.C. was a dependent child under section 300, subdivision (c), after finding that he was "at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent" In challenging the sufficiency of the evidence to support that finding, mother cites no persuasive authority. She relies on *In re Brison C.* (2000) 81 Cal.App.4th 1373, a case involving "an otherwise reasonably well-adjusted child who performed well at school and displayed no serious

³ We take judicial notice of the DSS March 22, 2012 six-month review report; the DSS April 11, 2012 Addendum Report; and the April 11, 2012 minute order and findings and orders. Appellant's Request to Take Judicial Notice, filed June 20, 2012, is granted.

behavioral problems, despised his father and desperately sought to avoid visiting him." (*Id.* at p. 1376.) Contrary to the child in *Brison C.*, seven-year-old J.C. had exhibited so much aggressive behavior that he needed a monitor with him at every recess. Further, J.C. had also reported that he found mother's assaultive behavior funny. In addition, mother's bizarre behavior in a criminal court proceeding caused her to abandon J.C. involuntarily, when an experienced judge questioned her mental competency to stand trial and ordered her incarceration and mental examination. Substantial evidence supports the juvenile court's finding that J.C. was at substantial risk of serious emotional harm, and subject to dependency jurisdiction under section 300, subdivision (c).

However, the evidence to support the juvenile court's section 300, subdivision (b) finding is not sufficient. "Before courts and agencies can exert jurisdiction under section 300, subdivision (b), there must be evidence indicating that the child is exposed to a *substantial risk of serious physical harm* or illness." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 823.) In finding that J.C. was exposed to the requisite risk of serious physical harm, the juvenile court referred to the report that mother had permitted him to ride his bike alone on a busy street, as well as mother's testimony. Mother had testified that while some children ride bikes to school alone, and it might be "legally fine and okay realistically," she did not think J.C. was "there yet." When the court made its finding that J.C. was exposed to a substantial risk of serious physical harm, no witness had testified that he observed J.C. riding his bike alone on a busy street. The evidence that he actually did so consisted only of a reference in a DSS report to unidentified school staff who reported that J.C. said he was late because he rode his bike to school alone when mother would not get out of bed. That evidence does not support the finding that J.C. was exposed to a substantial risk of serious physical harm. (§ 300, subd. (b); *In re Rocco M.*, *supra*, at p. 823.)

DISPOSITION

The order declaring J.C. to be a dependent child pursuant to section 300, subdivision (c) is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Ginger E. Garrett, Judge

Superior Court County of San Luis Obispo

Darlene Azevedo Kelly, under appointment by the Court of
Appeal, for Defendant and Appellant.

Warren R. Jensen, County Counsel, Leslie H. Kraut, Deputy
County Counsel, for Plaintiff and Respondent.