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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re L.T., a Person Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

LANCE T.,

Defendant and Appellant;

V.M.,

Defendant and Respondent.

B268001

(Los Angeles County
Super. Ct. No. DK08712)

APPEAL from orders of the Superior Court of Los Angeles
County, Julie F. Blackshaw, Judge. Affirmed.

Jack A. Love, under appointment by the Court of Appeal,
for Defendant and Appellant.

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

Judy Weissberg-Ortiz, under appointment by the Court of
Appeal, for Defendant and Respondent.

Lance T. (father) appeals from an exit order, terminating jurisdiction, awarding sole custody of his daughter L.T. to V.M. (mother), and limiting father to monitored visits with L.T. He also appeals from a restraining order, protecting mother and L.T. from him. Father challenges the juvenile court's jurisdictional findings regarding his domestic violence and alcohol abuse. He argues the exit order was an abuse of discretion, and there was no need for a restraining order. We disagree and affirm the orders.

FACTUAL AND PROCEDURAL SUMMARY

The parents met online, and mother moved into father's apartment in 2012. L.T. was born in May 2014. Father, who is significantly older than mother and on disability for back problems, stayed home with the baby while mother worked during the day. He would hand the baby over to mother in the evenings in order to have what he called "Lance time."

In the early morning hours on December 11, 2014, mother called 911. She reported that father had come home drunk and picked up L.T. Worried about the baby's safety, mother told him to put L.T. down. Father became belligerent. L.T. woke up and

started crying. Mother took her away from father and went to another room; father followed, trying to take L.T. back. He grabbed mother by the neck, pushed her onto the bed, and punched her in the forehead with a closed fist, all while she was holding the baby. Father was arrested. The responding officers reported observing injuries to mother's face, which were consistent with her version of events. Father showed signs of intoxication. He blurted out that he could do what he wanted in his house.

Later that day, officers responded to the family home again. This time, father was preventing mother from leaving with L.T. Father appeared to be under the influence, but refused to be tested. He rambled on, repeatedly insulting and denigrating mother, whom he considered "stupid" and incapable of taking care of the baby because she overfed L.T. and did not tighten the baby's diapers enough. He admitted he had been drunk and belligerent during the incident that morning, but denied hitting mother while she held L.T. When the social worker noticed his hands were swollen, father claimed he had defended himself after mother hit him.

Mother reported father took pain medication for back pain and drank alcohol several times a week. He was verbally abusive and their altercations resulted in a "tug-of-war" over the baby, usually when father was intoxicated. Father's criminal history revealed arrests for driving under the influence in 1977 and 1989.

On December 16, 2014, the Department of Children and Family Services (DCFS) filed a Welfare and Institutions Code section 300 petition,¹ alleging that, under subdivisions (a) and (b),

¹ Statutory references are to the Welfare and Institutions Code.

the parents' violent altercations in L.T.'s presence and, under subdivision (b), father's history of alcohol abuse endangered the child. At the detention hearing that same day, the court released L.T. to mother, granted father monitored visits, and issued a temporary restraining order (TRO) protecting mother and L.T. from father. The TRO was reissued several times during the pendency of the case.

The ensuing investigation revealed that father had become abusive immediately after L.T.'s birth.² Nurses at the hospital had to intervene and take him out of the room when he berated mother and threatened to take the baby away from her because he thought she was breastfeeding incorrectly. Father did not trust mother with L.T. and would take the baby along when he went out drinking at night. One night in the summer of 2014, father took L.T. out after mother had bathed her and put her down to sleep for the night. After being unable to reach him by phone, mother went out looking for him. She found father coming out of a neighbor's home drunk, and she tried to take L.T. away from him. Father called mother names, pushed her, and spat in her face. An audio recording from the night of that incident captured father cursing at mother and threatening to kill her, while changing the crying baby's diaper.³

² There was some evidence of prior verbal altercations as well. Mother had considered moving out after a fight in February 2014. She claimed father's intoxication led to another fight in May that she believed caused her to go into premature labor.

³ The parents initially reported that this incident took place in July 2014, but the audiotape was stamped August 2014, and subsequent references in the record identify the incident as having occurred in August 2014. We will use the latter date.

With respect to the December 2014 incident, mother explained L.T. had been sick and it had taken mother three hours to get her to go to sleep. When father came home intoxicated and approached the baby noisily, mother asked him not to wake her up. Father became even louder and took L.T. out of the crib. When mother managed to take the baby away, father pushed mother on a bed, grabbed her by the throat, choked her, and hit her on the forehead. On an audio recording from the morning of that incident, father sounded incoherent and appeared to wake up the sleeping L.T.

Mother expressed concern about father's ability to safely care for L.T. because he drove with the baby in the front passenger seat, would get angry when he could not soothe her, and suffered from severe back pain. She stated that he would drink at least three times a week and would get so drunk that his friends would have to carry him home because he could not walk or talk.

Although L.T. was his first child, father was adamant in interviews and e-mails to DCFS that he had superior parenting skills, and that mother and the maternal grandmother were "completely incompetent." He resented the maternal grandmother, who had stayed in his apartment for three months in order to help with the baby. Father believed that L.T. had greater affection for him than for mother, and that mother had concocted a plan to get sole custody. He claimed mother had hit and scratched him during the December 2014 incident, but the social worker noted that the photographs he offered as proof did not show injuries consistent with his version of events. Father originally claimed the photographs were taken on the same day, but the bruises appeared older, and the marks on father's wrists

could have been caused by handcuffs during the arrest. Mother denied assaulting father, and the arresting officer confirmed father presented with no injuries at the time of the arrest.

Father claimed not to mix his pain medication with alcohol, but conceded he may have done so, and insisted he had “a high tolerance.” He wore a “scram” bracelet, which detected no alcohol consumption in January and February 2015, but stopped wearing the bracelet in March 2015. He agreed to drug test only twice during the pendency of the case, in January and May 2015, and tested positive for opiates, likely because of his pain medication.

Mother had started counseling before the December 2014 incident because she felt threatened by father, but father had refused to join her since he believed counseling was for “insecure people.” In June 2015, mother’s therapist reported father had been in contact with mother despite the TRO. He had urged mother not to follow court orders because the parents could “work it out,” and he recently had asked mother to move to Florida with him. Mother had made substantial progress in therapy, and she was cooperating with DCFS.

In May 2015, father was allowed to have visits with L.T. under the supervision of his own monitors. In July, DCFS liberalized his visits to unmonitored four-hour visits on three work days. Father immediately indicated he planned to have L.T. over a weekend without approval. In September, DCFS learned that father had been taking L.T. out of her daycare every day for two months. The daycare provider terminated the contract with mother because she did not want to be involved in the parents’ custody dispute and was anxious about father’s presence at the daycare center. When the supervising social worker confronted father about violating visitation guidelines, he

became indignant and sent out a string of insulting messages, laced with profanity, in which he insisted he could see his daughter as he saw fit. About the same time, father responded to an attempt at collecting child support from him by suggesting he had nothing left to do but commit suicide, which resulted in a welfare check by police.

A contested jurisdictional hearing took place in late September 2015. Mother gave testimony consistent with her prior statements about father's drinking and the parents' altercations over L.T. She confirmed father repeatedly had contacted her despite the TRO, as late as within weeks of the hearing. Mother reported father had raised his voice at the daycare center staff when they called L.T. by her middle, rather than first, name, and he had gotten in an altercation with neighbors in July 2015.

Father denied mother's claims that he would get drunk three to four times a week, or that he grabbed mother by the neck in the December 2014 incident. He insisted mother had hit him, but clarified that, during the August 2014 incident, mother had tried to reach around his arm to get to the baby. He gave inconsistent accounts of where L.T. was during the December 2014 altercation, but confirmed that mother had been upset over his intoxication. Father testified he had felt something strike him in the back during that incident, but could not identify what it was even though he claimed to have turned around immediately. He testified mother had been "accosting [him] uncontrollably," and he had raised his arms to defend himself, receiving scratches and bruises on his wrists. He acknowledged the parents' relationship became contentious because he was

unhappy about the maternal grandmother staying at his apartment for three months.

Father testified he had been in therapy since February 2015, and had addressed his anger management issues, but he also claimed his therapist could not “make rhyme or reason as to what [father was] being subjected to” and shared his frustration with DCFS. Father discounted his comment about suicide in response to the child support request as facetious and characterized the resulting police response as harassment orchestrated by DCFS. He also believed the child’s daycare was cancelled due to DCFS’s “harassment” and insisted he had received approval for unmonitored daily and weekend visits with L.T.

Supervising social worker Claudia Flores testified she had told father he could have unmonitored visits with L.T. three days a week. Flores stated father’s behavior deteriorated after she called L.T. by her middle name and attempted to enforce the visitation schedule. She believed father’s continued anger management issues posed a risk to L.T. during unmonitored visits.

Father’s counsel acknowledged father was “very difficult” and “not a likeable guy,” but attributed the problems in the case to father’s frustration with DCFS. Father’s counsel also argued that mother was the aggressor during both the August and December 2014 incidents, and that there was no evidence of current risk of harm to L.T. because the parents had separated, and father was safe and appropriate during the visits with his daughter.

Mother’s counsel stressed the credibility of mother’s testimony that she had been a victim of father’s aggression,

which intensified with his drinking. Mother's counsel referenced the police report, which noted injuries to mother but no injuries to father on the morning of December 11, 2014, and the consensus of all witnesses that day that father had been visibly intoxicated. Mother's counsel stated mother was in favor of monitored visits for father, but was not opposed to liberalizing his relationship with L.T. if he showed progress.

L.T.'s counsel pointed out that father's verbal and physical abuse of mother revolved around the child, and father continued to make derogatory statements about mother and the maternal grandmother throughout the case. L.T.'s counsel criticized DCFS for liberalizing father's visits to unmonitored without evidence that he had made progress in his programs; highlighted father's testimony that his therapists agreed the dependency case was "irrational," and argued that the therapy essentially dealt with father's perceived "victimization" rather than with the anger issues that brought on the case; argued father was prone to "dramatics"; and agreed to closing the case only if father's visitation with L.T. was monitored.

DCFS's counsel noted that mother's statements about the incidents of abuse had been consistent throughout the case and were corroborated by police; on the other hand, father claimed to be victimized by mother and the system and showed no understanding or remorse. DCFS was concerned that the recording from August 2014 captured father lashing out at mother while taking care of the baby, and that there were several instances where L.T. was involved in a tug-of-war between the parents, usually after father mixed alcohol with painkillers. DCFS was concerned father had not addressed any of the case issues and had refused to comply with the schedule for

unmonitored visits. Therefore, DCFS recommended the court close the case with a custody order in favor of mother and grant monitored visits to father.

The court sustained the petition in full, finding L.T. had lived in the midst of physical and verbal violence, as well as alcohol abuse, and mother had failed to protect her. The court concluded father was not credible, as he appeared to “contort the facts to show every time that he was an innocent victim. He doesn’t accept responsibility for any of the verbal and physical outbursts. It is always everybody else’s fault, in his view. And his testimony suggests that he feels completely justified in his words and action because of how he was treated by other people. [¶] . . . [T]he father’s verbal and physical outbursts . . . most of the time did relate to [L.T.] herself. And she was subjected to . . . unpredictable repeated explicit episodes of physical and verbal violence by the father. Frankly, he appeared to me, based on his testimony that he is a powder keg waiting to explode, and on many occasions he did. And that is the reason I am very concerned about him having unmonitored visits with [L.T.]”

The court found mother “extremely credible” and believed she did not hit father, or cause him to sustain the injuries he claimed, even though there may have been “some defensive action between the two of them.” The court added that L.T. was at risk whether or not the violence was mutual. The court was concerned L.T. was subjected to father’s “explosive anger,” which was directed at “virtually everybody”—mother, the maternal grandmother, the daycare staff, and government workers. Because of father’s inability to acknowledge and address his anger management issues, the court removed the child from father’s custody. The court concluded L.T. was safe in mother’s

care and terminated jurisdiction with an order awarding sole custody to mother and monitored visits to father. The court also issued a permanent restraining order, protecting mother and L.T. from father, but allowing father monitored visits.

This appeal followed.

DISCUSSION

I

We review father's challenge to the jurisdictional findings for substantial evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) We view the evidence and draw all reasonable inferences in favor of the court's findings without reweighing credibility or resolving evidentiary conflicts. (*Ibid.*)

Father argues that L.T. was not harmed in the parents' altercations in August and December 2014, and there was no evidence at the time of the hearing that she was in danger of physical harm. However, past acts of domestic violence may support a finding of jurisdiction if there is evidence that "the violence is ongoing or likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm." (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717; *In re T.V.* (2013) 217 Cal.App.4th 126, 134.) Not only the passage of time, but the parents' current circumstances and their "current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs" are relevant factors in determining whether past conduct creates a risk of future harm. (*In re John M.* (2013) 217 Cal.App.4th 410, 418–419.)

In *Daisy H.*, *supra*, 192 Cal.App.4th 713, a single incident of the father's choking the mother and pulling her hair, which

occurred between two and seven years earlier and outside the children's presence, was deemed insufficient for a current finding of jurisdiction. (*Id.* at p. 717.) Here, in contrast, mother credibly testified that father had been verbally abusive towards her since L.T.'s birth, that the parents had engaged in tugs-of-war over L.T. on more than one occasion, and that father had been physically abusive of mother in the baby's immediate presence on two occasions, during one of which he pushed and struck mother while she was holding the baby. Mother's version of events was corroborated by audio recordings, as well as by government witnesses present at the aftermath of the December 2014 incident. The altercations between the parents were recent, repeated, and directly involved L.T.

The absence of incidents of physical abuse against mother since detention does not show future incidents were unlikely; to the contrary, their absence may reasonably be attributed to the TRO in place during the pendency of the dependency proceedings. Throughout the case, father persisted in petty, yet often exaggerated, vulgar, and denigrating, complaints about mother's (and the maternal grandmother's) lack of intelligence and child-rearing skills. He sent mother angry messages and lashed out at DCFS workers and daycare staff over trivial matters, such as their use of L.T.'s middle name and their efforts to enforce his visitation schedule. That the parents no longer lived together, or that father redirected his anger towards others does not mean there was less risk of harm to L.T., who remained the main reason for his outbursts. As the dependency court noted, father's testimony at the jurisdictional hearing showed his abiding belief that he was victimized by mother and the dependency system and his continued inability to accept responsibility for his own

actions. The finding of jurisdiction based on his unresolved anger management issues, which caused the domestic violence in the first place, is supported by substantial evidence.

The evidence also supports the finding of jurisdiction based on father's history of alcohol abuse. According to mother, father drank at least three times a week. He would get so intoxicated that he would be unable to walk or talk, and his friends would have to carry him home. Mother attributed their altercations over L.T. to his drinking. Father conceded he mixed his pain medication with alcohol, yet appeared oblivious of the effect alcohol had on his behavior.

Father's drunken altercations with mother over L.T. are evidence of his substance abuse problem. (See *In re Drake M.* (2012) 211 Cal.App.4th 754, 766.) Since L.T. is a very young child, father's substance abuse is prima facie evidence of his inability to provide regular care "resulting in a substantial risk of physical harm." (*Id.* at p. 767.) That there was no evidence of continued alcohol abuse at the time of the hearing is not dispositive since father refused to randomly drug test for DCFS, even though the court referred him to testing, and he wore a "scram" bracelet for only a short period of time. (See *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1384 [refusal to submit to testing may properly be considered equivalent to positive test result].) Nor is DCFS's temporary liberalization of father's visits to unmonitored dispositive since, as L.T.'s counsel pointed out, the decision was made without proper consideration of father's progress in the case. Actual harm to the child is not required since the dependency court need not wait until a child is seriously harmed to assume jurisdiction. (*In re N.M.* (2011) 197 Cal.App.4th 159, 165.)

Substantial evidence supports the court’s jurisdictional findings.

II

Father challenges the removal of L.T. from his custody in the dispositional order. A dispositional order regarding child custody is reviewed for abuse of discretion and will not be disturbed unless it is arbitrary, capricious, or patently absurd. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319.)

Before a juvenile court may order a child removed from parental custody, it must find by clear and convincing evidence that there is, or would be, substantial danger to the “physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home” and there are no reasonable means by which the child can be protected without removal. (§ 361, subd. (c)(1).) On appeal, we review the court’s rulings for substantial evidence. (See *Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880–881.)

Father argues that there is no evidence he harmed L.T. during the two months of unmonitored visits prior to the dispositional hearing, and that the only problem reported at the time was his failure to abide by DCFS’s visitation schedule. Neither the substantial evidence test, nor the abuse of discretion test requires that we accept father’s characterization of the evidence or that we draw inferences in his favor. (See *In re C.Q.* (2013) 219 Cal.App.4th 355, 364.) Nor is there a requirement that the child suffer actual harm for a removal order to be appropriate. (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 146.)

Substantial evidence in the record indicates that returning L.T. to father’s custody—in essence awarding the parents joint custody—would be a recipe for disaster. Father has shown a lack

of respect for mother, and a desire to control and dominate her relationship with L.T. He misunderstood DCFS's limited liberalization of his monitored visits as allowing him to see the child every day, including on weekends. Worse, when DCFS attempted to correct his misunderstanding, he responded with a torrent of vulgar messages directed at the social worker, in which he made clear he would do whatever he wanted. At the final hearing, father denied responsibility for any of the case issues and showed no willingness to curb his controlling and aggressive tendencies. It is reasonable to conclude that granting the parents joint custody would result in renewed altercations over L.T. that would expose her to substantial danger of physical or emotional harm. The court did not abuse its discretion in declining to return L.T. to father's custody.

III

Father separately challenges the three-year permanent restraining order, protecting mother and L.T. from him, as unsupported by substantial evidence. DCFS takes no position on the matter, but mother has filed a separate respondent's brief in support of the order.

The dependency court has broad discretion to issue TRO's protecting the dependent child and any caregiver during the pendency of a case (§ 213.5, subd. (a)) and to fashion custody, visitation and protective orders when it dismisses dependency jurisdiction. (§ 362.4.) Courts have applied both substantial evidence and abuse of discretion standards of review to such orders. (*In re N.L.* (2015) 236 Cal.App.4th 1460, 1466.) On appeal, there is no practical difference between the two standards since "we view the evidence in a light most favorable to the respondent, and indulge all legitimate and reasonable inferences

to uphold the juvenile court's determination. If there is substantial evidence supporting the order, the court's issuance of the restraining order may not be disturbed.' [Citation.]" (*Ibid.*)

Father argues that mother needed no protection from him because DCFS's last reported contact between the parents was three months before the final hearing. However, mother testified father had contacted her "a couple of weeks" before that hearing. There was evidence father had contacted mother throughout the pendency of the case, often in violation of the TRO. He sent her angry messages in the beginning and by the summer of 2015 attempted to convince her to move out of state with him. His anger towards the end of the case shifted to DCFS when the agency attempted to enforce his limited visitation schedule. Since the court terminated jurisdiction with monitored visitation for father, it was reasonable to protect mother from father's unresolved anger issues by preventing the parents' direct contact in order to avoid father's future physical or emotional abuse of mother.

Father argues that protecting L.T. from him was unnecessary because there was no evidence that he would harm his daughter. He relies on *In re C.Q.* (2013) 219 Cal.App.4th 355, where inclusion of three children (ages 16, 12, and 11) in a restraining order against their father was deemed improper. (*Id.* at p. 357.) In that case, the children had not been placed in harm's way during the domestic violence incidents against the mother, and they were not afraid of the father, who had not engaged in any violent or inappropriate conduct during the pendency of the dependency case. (*Id.* at pp. 357, 364–365.) Father also relies on *In re N.L.*, *supra*, 236 Cal.App.4th 1460, where a six-year-old child was deemed improperly included in a

restraining order against the mother because the mother had not engaged in violent conduct or threats in the child's presence and had not abused her visitation rights. (*Id.* at pp. 1462, 1469.)

L.T. was significantly younger than the children involved in the cases on which father relies. Moreover, here, there was evidence she was at the center of father's abusive behavior towards mother, as well as towards government workers and daycare staff, so much so that the social worker considered father's explosive anger a danger to L.T., and the daycare provider stated father's presence at the daycare gave her anxiety.

This case is closer to *In re B.S., Jr.* (2009) 172 Cal.App.4th 183, where the court affirmed the inclusion of an infant in a restraining order. There, the court concluded that the father's "tendency to resort to violence" and "lack of impulse control" posed risk to the child's safety "even in the mother's absence, if the father got angry with another adult or with [the child] himself. Even assuming an opposite inference might be equally reasonable, we are not authorized to second-guess the juvenile court on this point." (*Id.* at p. 194.) Similarly, a restraining order was affirmed in *In re Cassandra B.* (2004) 125 Cal.App.4th 199, where a mother had sought unauthorized access to her child. (*Id.* at p. 212.) Because the domestic violence against mother and father's later outbursts against others revolved around L.T., who was still an infant, and because father had refused to abide by his visitation schedule, it is reasonable to infer he posed a risk to the child's safety even when mother was not around. Inclusion of L.T. in the restraining order, therefore, was proper.

DISPOSITION

The orders are affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.