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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re BRIONNA D. et al., Persons
Coming Under the Juvenile Court
Law.

B282646

(Los Angeles County
Super. Ct. No. DK20320)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

DANIELLE A.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Julie Fox Blackshaw, Judge. Affirmed in part and
reversed in part.

Elizabeth C. Alexander, under appointment 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.

In 2015, Danielle A. (mother), who had an extensive history of domestic violence against Brian D. (father), threw a pair of scissors at him in their living room, missing him and narrowly missing two of their three minor children. The juvenile court declared the children to be dependants of the court under subdivision (b) of Welfare and Institutions Code section 300¹ on the ground that domestic violence between a mother and father while children are present endangers the children. Mother does not challenge that finding on appeal. However, the court found on identical allegations that the children were also described by subdivision (a) of section 300, which supports jurisdiction when a parent exposes her children to serious physical harm inflicted “nonaccidentally.” Mother contends this finding was unsupported by substantial evidence because nothing in the record suggests the children were at risk of nonaccidental harm.

We conclude no evidence suggests the children were at substantial risk of harm inflicted nonaccidentally. Accordingly, we reverse the finding under subdivision (a) of section 300 but affirm the subdivision (b) finding.

¹ All statutory references will be to the Welfare and Institutions Code.

BACKGROUND

Mother and father are the parents of Brionna D., age 11, and twins Natalie and Darius D., age 9. On November 2, 2016, mother, a regular methamphetamine user with multiple domestic violence arrests, attacked father by throwing furniture at him and trying to stab him with a pair of scissors. When he fell backward into a room where the children were sitting on their beds, mother threw the scissors at him, missing him and narrowly missing the children. Mother was arrested.

The Department of Children and Family Services (DCFS or the department) filed a section 300 petition alleging, as ultimately sustained, that mother's history of violent altercations with father in the presence of the children placed the children at risk of harm. The juvenile court detained the children from mother and placed them with father, ordered monitored visitation, and granted a temporary restraining order protecting father and the children from mother.

At the jurisdiction hearing, the juvenile court found "clearly there was violence," and sustained the petition.

At the disposition hearing, the juvenile court reaffirmed its placement of the children with father, with monitored visitation, and ordered mother to complete an anger management program, submit to drug testing, and participate in counseling.

Mother timely appealed the jurisdictional and dispositional orders.

DISCUSSION

Mother admits that her penchant for violent altercations with father in the presence of her children places the children at risk of physical harm as contemplated by subdivision (b) of section 300. She contests only the finding that the children are

at risk of physical harm inflicted nonaccidentally, as contemplated by subdivision (a).

DCFS preliminarily argues we need not consider mother's appeal at all because when a dependency petition alleges multiple grounds for jurisdiction over a minor, a reviewing court can affirm the juvenile court's finding of jurisdiction if any one of the grounds is supported by substantial evidence, and need not consider whether another alleged ground is supported by the evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773-774.) However, we generally exercise our discretion to reach the merits of a challenge to a jurisdictional finding if the finding could be prejudicial to a parent in current or future dependency proceedings, or could have other adverse consequences. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.) Because nonaccidental harm to children carries a heavy stigma, and because DCFS routinely cites prior dependency findings in later reports, we will entertain mother's appeal as to the juvenile court's finding under subdivision (a) of section 300 even though its finding under subdivision (b), which mother does not appeal, independently supports jurisdiction.

We review a jurisdictional order for substantial evidence. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) "In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. "In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court."

[Citation.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] ‘ “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].” ’ ’ ’ ’ ” (*Ibid.*)

Subdivision (a) of section 300 authorizes jurisdiction if the “child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian.” (*Ibid.*)

The department neither alleged nor offered to prove that Brionna, Natalie and Darius D. were placed at risk of physical harm inflicted nonaccidentally. The petition alleged identically under subdivisions (a) and (b)(1) that mother had a “history of domestic violence and engaging in violent altercations in the presence of [her] children,” and “[o]n 11/2/16, . . . brandished a pair of scissors and repeatedly swung the scissors at the father, causing the father to fall backwards on the floor in the presence of the children. The mother threw the scissors at the father in the children’s home, in the presence of the children. The mother forcibly threw a chair across the kitchen in the presence of the children. . . . Such violent altercations on the part of . . . mother endangers the children’s physical health and safety and places the children at risk of serious physical harm and damage.” No mention was made that the potential harm might be inflicted nonaccidentally.

Further, nothing in the record supports a finding that mother’s domestic violence has been or potentially would be

directed at her children, or that the risk they suffer would be of nonaccidental, i.e., intended or deliberate injury. The only evidence was that mother always directed her anger at father, and that the children were never more than bystanders. This supports the juvenile court's finding under subdivision (b) of section 300 but not the finding under subdivision (a).

The department does not disagree. It argues only that mother's history of domestic violence endangers her children. But the issue is whether the danger is of nonaccidental injury, i.e., whether mother deliberately endangered her children. On that issue, DCFS's petition, proof, and opposing brief on appeal are silent.

DISPOSITION

The juvenile court's finding of jurisdiction under subdivision (a) of section 300 is reversed. The court's other orders are affirmed.

NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.