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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re A.H., et al., Persons Coming Under
the Juvenile Court Law.

B265926

(Los Angeles County
Super. Ct. No. DK10642)

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, Terry
Truong, Juvenile Court Referee. Affirmed.

Denise M. Hippach, under appointment by the Court of Appeal, for Defendant and
Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith
Davis, Acting Assistant County Counsel, William D. Thetford, Principal Deputy County
Counsel, for Plaintiff and Respondent.

The juvenile court sustained allegations that J.S. (Father) sexually abused his daughter A.S. and stepdaughter A.H., and physically abused all the children, i.e., both girls and Father's two sons, M.S. and J.S. The juvenile court declared the children dependents of the court under Welfare and Institutions Code section 300, subdivision (b)(1).¹ In adjudicating the children dependents of the court, the court sustained the allegations against Father for committing the abuse and the allegations against defendant and appellant F.M. (Mother) for being unable to protect the children despite knowledge that Father physically abused them. Mother asks us to decide whether the juvenile court's jurisdictional findings against her must be reversed.

I. BACKGROUND

Mother has four children: A.H., who is currently 18, M.S., who is 16, A.S., 15, and J.S., 13. Mother and Father married before A.H. was one year old. Father is not A.H.'s biological father, but he is the presumed father of Mother's three other children.

On March 14, 2015, A.S. was admitted to the hospital with low blood pressure and a low heart rate after being recently diagnosed with bulimia. She told hospital physicians she had had suicidal thoughts and that she sometimes cut herself. She also reported that Father slapped her in the face when she misbehaved, that he had struck her with a belt two years earlier, and that when he pulled her away from fights with her siblings, he left bruises on her arm. Based on A.S.'s statements, the hospital contacted the Los Angeles County Department of Children and Family Services (the Department).

When a Department social worker interviewed the family two days later, Father admitted to disciplining the children by slapping them in the face and using a belt. Mother initially claimed she did not see Father physically disciplining the children but she knew about incidents because the children told her.

¹ Statutory references that follow are to the Welfare and Institutions Code.

In a conversation with Mother shortly after DCFS became involved, A.H. and A.S. revealed Father had also sexually abused them. A.S. said Father had fondled her breasts and raped her. A.H. said Father had fondled her breasts and buttocks and digitally penetrated her. Mother immediately brought the girls to the police station and filed a report. Father was arrested and subsequently charged with several counts of sexual assault and child abuse. He remained in custody during all times relevant to this case.

The Department thereafter filed a petition under section 300, in which it alleged the children came within the jurisdiction of the juvenile court pursuant to subdivisions (a) (non-accidental serious physical harm), (b) (failure to protect), (d) (sexual abuse), and (j) (abuse of sibling). In addition to claiming the children had suffered or were at a substantial risk of suffering serious physical harm by reason of Father's physical abuse of all four children and his sexual abuse of A.H. and A.S., the Department alleged Mother "knew of [Father's] physical abuse of the children and failed to protect the children. [Mother] allowed [Father] to reside in the children's home and have unlimited access to the children. Such physical abuse by [Father] and [Mother's] failure to protect endangers the children's physical health and safety and places the children at risk of serious physical harm, damage, danger, physical abuse and failure to protect."

At a detention hearing on April 2, 2015, the juvenile court detained the children from Father and released the children into Mother's custody. The court authorized monitored visits between Father and his two boys but no visits of any kind between Father and the two girls.

The Department later conducted additional interviews of the family, which it summarized in a jurisdiction/disposition report. J.S. stated Father hit the children's arms and legs with a belt hard enough to elicit tears and to cause marks and bruises; Father continued to use a belt on them until he had been arrested. J.S. also reported seeing Father slap A.H. and punch M.S. and A.S. in the stomach or face, including one time three or four months earlier when he punched A.S. hard enough to make her nose bleed.

A.S. recalled Father beating her with a belt, hitting her with his fist, throwing a basketball at her face, hitting her so hard in the shoulder that it went numb, and kicking her in the ribs. She also saw Father punch M.S. in the ribs.

M.S. said Father “would smack the shit out of [the children]” and that he hit them with his hands, shoes, spoons, etcetera. In the past year, M.S. said that Father hit him with a belt and that he commonly left marks and bruises.

According to A.H., Father meted out physical abuse “almost daily,” to the point where she flinched whenever Father approached to hug her. The only variable was which child would get punished. A.H. said Father had abused the children over the past year and “always hit [them] hard enough [to leave] a mark” but sometimes struck them in places where the marks were not visible. Father hit A.H. with a belt hard enough to leave a welt, and he applied additional force whenever any of the children defended themselves. A.H. saw Father punch M.S. in the stomach a few weeks before Father’s arrest, and she recalled Father slapping A.S. across the face on many occasions, hard enough to leave a hand print or redden her cheeks. All four children agreed that Father treated M.S. and A.S. more harshly than A.H. and J.S.

The children also reported that Father and Mother frequently argued and that Father was verbally abusive to Mother. None of the children recalled seeing any physical violence between Mother and Father in the recent past, however. The girls said Mother wanted to get away from Father but felt she could not because of financial or immigration issues.

All four children wanted to remain with Mother. J.S. and M.S. said they felt safe with her. They, along with A.H., believed Mother was protective of them. A.S. also felt safe with Mother and said that Mother tried to help her during her difficulties. A.H. said most of Father’s abuse happened while Mother was at work. Whenever the children told her about it, Mother would get extremely angry and “would confront [Father] each time.”

Mother told the social worker interviewing her that she would do anything to protect her children. Mother claimed she was not aware of the extent of Father’s physical abuse because he worked mornings and she worked afternoons and evenings. By the

time she arrived home, the children were usually in bed or close to it. But Mother also admitted she knew Father had physically harmed the children. All the children told Mother that Father would become angry with them “out of nowhere.” When the children were younger, they told her Father hit them as a form of discipline. Mother said she always confronted Father on those occasions, and the children recently told her they did not want to disclose Father’s abuse because he would get angry with them when Mother confronted him. Mother said it was uncommon that she would see Father hit the children, but she conceded it had happened. She had witnessed him “smack [M.S.] across the head” with an open hand, and she had recently heard him scream at and hit A.S.; although she claimed she did not see the blow land, Mother did admit she saw A.S.’s “cheek was red” afterwards. Mother had also seen Father attempt to strike the children.

Mother denied knowing the children were scared of Father until the Department began investigating. The social worker’s report also stated Mother conceded she had been told by M.S. and A.H. more recently that Father used a belt on them and punched M.S. in the ribs, but it was unclear whether Mother knew of these incidents before the Department began its investigation.

In addition to relating facts about her knowledge of Father’s abuse of the children, Mother also told the social worker Father had abused her physically and verbally. He pushed her, threw things at her, and hit her hard enough to leave bruises. In 2001, he threw her into a wall and punched her in the head twice after she confronted him about having an affair with her sister. Mother called the police, who arrested Father, and he spent three weeks in jail. They attended counseling, and the physical abuse ceased for about a year. Father then began pushing and throwing things at Mother again, though less frequently than in the past. The most recent incident she could remember occurred in late 2014, when Father struck her.

At a combined jurisdictional and dispositional hearing on June 3, 2015, the court received into evidence, without objection, the Department’s detention and jurisdiction/disposition reports. Mother asked the court to strike the allegations against

her because the evidence failed to show a risk of future harm or reoccurrence. Counsel for Mother argued the court lacked jurisdiction under section 300 unless it found that “circumstances at the time of the hearing subject[ed] the minors to a defined risk of harm.” Counsel reasoned that while past conduct had a bearing on current conditions, past conduct alone was not enough to show the conduct would reoccur. Thus, now that Mother had custody of the children and there was no evidence she would fail to protect them, there was no correlation between any previous failure to protect and the children’s existing risk of harm. Counsel for the children joined in Mother’s request to strike the allegations as to her because current conditions did not show an existing risk of harm. The Department argued the juvenile court should sustain the allegations against Mother, asserting her inability to protect the children was a sufficient basis on which the court could assert jurisdiction because Mother had herself been a victim of Father’s domestic violence and would have difficulty protecting the children from harm.

The court sustained the jurisdictional allegations brought under subdivisions (b) (failure to protect) and (d) (sexual abuse) and declared all four children dependents of the court. As to Father, the court found he sexually abused A.S. and A.H. and he physically abused all four children. The court rejected Mother’s request to strike the allegations against her but did amend count b-3, the sustained count against Mother. The court’s amendment changed the petition so that it no longer alleged she “failed” to protect her children and instead alleged she was unable to protect them. The court did not find sufficient evidence to assert jurisdiction under subdivision (a) (non-accidental serious physical harm) or (j) (abuse of sibling).

As to disposition, the court removed the children from Father’s custody and placed them with Mother. The court ordered family maintenance services, including individual counseling for the children and sex abuse awareness counseling for Mother. The court ordered monitored visits between Father and the boys but denied any contact between Father and the girls. The court did not order reunification services for Father, and he remained incarcerated at the time of the hearing.

Both Father and Mother filed a notice of appeal, but Father filed a brief pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835 raising no contentions of error. We ordered Father's appeal dismissed as abandoned, and only Mother's appeal is now before us for decision.

II. DISCUSSION

Mother contends the finding that she knew about and was unable to protect her children from physical abuse is unsupported by substantial evidence. She further maintains the finding was improper because there was no likelihood Mother's conduct would reoccur and therefore no evidence of a substantial risk of harm to the children at the time of the hearing. Finally, Mother avers that jurisdiction under section 300, subdivision (b)(1) requires a finding of parental fault, which was absent in her case.

We hold the juvenile court's exercise of jurisdiction was proper for two independently sufficient reasons. First, Father's concession that the findings against him were sufficient to establish juvenile court jurisdiction over the children obviates any need to consider Mother's contentions of error. Second, and in any event, there was sufficient evidence to support the juvenile court's finding that the children suffered, or were at substantial risk of suffering, serious physical harm "as a result of the . . . inability of [Mother] to adequately . . . protect the child[ren]." (§ 300, subd. (b)(1).)

A

Where, as in this case, a dependency petition alleges multiple grounds on which the juvenile court may assert jurisdiction over a minor, we may affirm the juvenile court's finding of jurisdiction if any one of the statutory bases that are enumerated in the petition is supported by substantial evidence. (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72.) "For jurisdictional purposes, it is irrelevant which parent created [the] circumstances" triggering jurisdiction. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491 (*I.A.*)). "[A] jurisdictional finding good against one parent is good against both," which is consistent with the dependency law's purpose of protecting children, not

prosecuting their parents. (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397; see also *In re Briana V.* (2015) 236 Cal.App.4th 297, 308.)

Here, the court found true allegations that Father physically abused all of the children. Mother concedes the children will remain dependents of the court on account of those findings, regardless of how we decide her appeal. We agree, and we therefore hold, following well-established precedent, that the jurisdictional findings should be affirmed on that basis regardless of the court's findings against her. (See *In re I.J.* (2013) 56 Cal.4th 766, 773.)

Mother nevertheless asks us to review her challenge on the merits, asserting we may exercise our discretion to do so under *In re Drake M.* (2012) 211 Cal.App.4th 754 (*Drake M.*), which holds a reviewing court may consider one parent's challenge to a jurisdictional finding where "the [challenged] finding (1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) 'could have other consequences for [the appellant] beyond jurisdiction' [citation]." (*Id.* at pp. 762-763.)

The grounds for exercising discretionary review envisioned in *Drake M.* are not present here. Mother does not oppose the court's dispositional order and, apart from general speculation that the challenged finding could "have far reaching implications with respect to future dependency proceedings in this case and mother's parental and custodial rights," she has not specified how the finding might prejudice her in the future. (See, e.g., *I.A.*, *supra*, 201 Cal.App.4th at p. 1493 [declining to consider father's challenge to a jurisdictional finding where he did not "suggest[] a single specific legal or practical consequence from this finding, either within or outside the dependency proceedings"].)

B

Although we need not address the evidentiary support for any remaining jurisdictional findings once a single finding has been found supported by the evidence

(*I.A.*, *supra*, 201 Cal.App.4th at p. 1492), we briefly describe why Mother’s contentions of error would not succeed even if we entertained her arguments on appeal.

Section 300, subdivision (b)(1) authorizes jurisdiction over a child where “[t]he 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” Here, there was substantial evidence from which the court could find Mother was unable to protect her children, which caused them to suffer actual harm.

There was evidence Mother knew of Father’s abuse. Although she was usually at work when it occurred, the children informed her of Father’s abuse multiple times and Mother admitted she saw and heard Father hit the children. The children stated Father physically disciplined them “almost daily” and frequently caused marks, bruises, welts, and even bleeding. In addition, Father had been physically aggressive toward Mother throughout their relationship and Mother knew him to have a violent temper generally. There was also evidence Mother was unable to protect the children. Despite knowing of Father’s abuse and expressing a desire to leave him, Mother stayed with him for financial or other reasons. Although Father’s abuse continued after Mother confronted him about it—which happened more than once—she did not take more effective action to curb his behavior. Based on those facts, the court had an adequate basis to find Mother was unable to protect the children from Father’s harm.

Mother also asserts, in cursory fashion limited to a short paragraph, that it is not enough to show her past conduct caused harm; there must also be sufficient evidence that her inability to protect the children would reoccur or subject the children to an existing risk of harm. Assuming such evidence of a then-current or ongoing risk was necessary, there was sufficient evidence before the juvenile court. At the time of the hearing, Father and Mother remained married. Even though Father was incarcerated, he had not been convicted, leaving open the possibility of his return home. (See, e.g., *In re Carlos T.* (2009) 174 Cal.App.4th 795, 806 [offending parent’s current incarceration did not necessarily preclude risk of future harm where parent had not yet been sentenced and still

had a right to appeal].) In addition, Father’s abuse, along with Mother’s inability to protect the children from it, occurred over a long period of time until shortly before the hearing. (Cf. *In re David H.* (2008) 165 Cal.App.4th 1626, 1644 [past conduct alone might be insufficient to establish jurisdiction if a long period of time elapsed between the incident and the jurisdictional petition or hearing]; *In re J.N.* (2010) 181 Cal.App.4th 1010, 1025-1026 [single drunk driving incident insufficient to show future risk of harm without evidence parents had substance abuse problem].) Moreover, as of a week before the combined jurisdictional and dispositional hearing, Mother had not yet begun counseling sessions or enrolled in a sex abuse awareness class, either or both of which would have left her better equipped to protect the children.

Mother also argues that jurisdiction under section 300, subdivision (b)(1) requires a showing of parental fault or blame that was not made here. (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1254 (*Precious D.*) [holding that “parental unfitness or neglectful conduct must be shown in order to assert dependency court jurisdiction under that part of section 300(b) providing for jurisdiction based on the parent’s ‘inability . . . to adequately supervise or protect the child’”].) Even assuming for argument’s sake *Precious D.* was correctly decided (contra *In re R.T.* (2015) 235 Cal.App.4th 795, review granted June 17, 2015, S226416; *In re Tyler R.* (2015) 241 Cal.App.4th 1250, review granted Jan. 27, 2016, S231144), this case is factually distinct from *Precious D.* in significant respects.²

The mother in *Precious D.* could not protect her daughter because the girl continually ran away and refused to return home. Here, by contrast, Mother’s inability to protect her children was not because they were “incorrigible.” (*Precious D.*, *supra*, 189 Cal.App.4th at pp. 1257, 1261.) In *Precious D.*, the mother said she “tried everything” to provide for her daughter’s safety. (*Id.* at p. 1257.) Here, the juvenile court was entitled to find Mother did not do all she could to protect her children from endangerment. Under the circumstances, Mother’s conduct showed an “inability . . . to protect the child[ren]”

² Mother also fails to argue the finding against her contravenes federal due process principles, which was the basis for the Court of Appeal’s holding in *Precious D.* (*Precious D.*, *supra*, 189 Cal.App.4th at pp. 1260-1261.)

from “serious physical harm,” rendering jurisdiction proper under the plain language of section 300, subdivision (b)(1).

DISPOSITION

The juvenile court’s order is affirmed.

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BAKER, J.

We concur:

TURNER, P.J.

RAPHAEL, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.