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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 Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.H.,

Defendant and Appellant;

A.G.,

Respondent.

B294331

(Los Angeles County Super.
Ct. No. 17LJJP00013C)

APPEAL from an order of the Superior Court of Los Angeles County, Nancy Ramirez, Judge. Affirmed in part, and remanded in part.

Joseph D. Mackenzie, under appointment by the Court of Appeal, for Defendant and Appellant M.H.

Roni Keller for Respondent A.G.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Father appeals the juvenile court's order finding jurisdiction over his daughter after sustaining one count under Welfare and Institutions Code section 300, subdivision (b)(1).¹ Father argues the juvenile court erred in finding that a single incident of domestic violence with his girlfriend outside of the child's presence placed the child at substantial risk of harm. Father also contends the juvenile court erred when it terminated jurisdiction with a custody order. DCFS argues substantial evidence supported jurisdiction, but does not take a position on the custody order. Mother filed a respondent's brief in support of the jurisdiction and custody orders. We affirm the jurisdictional finding, remand for the trial court to amend the minute order to reflect the custody order it stated orally at the hearing, and otherwise affirm the custody order.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and father have a daughter (born December 2014). Mother has two additional children (five and seven years older than daughter) by other fathers. Father has several other children that are not at issue in this dependency case. At the inception of the present matter, the parents were not living together, and mother's children were residing with mother. Father was not living with any of his children. Only daughter is at issue in this appeal.

The family was involved in an earlier dependency investigation prior to this present matter. In April 2016, mother reported to the Department of Children and Family Services (DCFS) that father sexually abused daughter while daughter, daughter's sibling, mother, and father shared a bed. During the

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

investigation, the parents admitted to verbally threatening and intimidating each other. DCFS closed the referral as inconclusive and because “the situation ha[d] stabilized.” From that point forward, mother did not permit father to visit daughter.

In early 2017, prior to the initiation of this dependency case, father sought visitation with daughter in family court. On February 6, 2017, father applied for temporary emergency family law orders. In the application, he stated mother “has been physically and verbally abusive to me in the past.” On August 28, 2017, the family law court ordered mother to have physical custody of daughter, and father to have visits on the first, third, and fourth weekends of the month and Tuesday and Thursday afternoons. Father again filed for temporary emergency family law orders on December 22, 2017. In father’s request, he reiterated that mother had been physically and verbally abusive to him in the past.

1. *DCFS’s Present Investigation*

On July 21, 2017, DCFS received a referral alleging mother’s general neglect of the children discovered during a police search of the home she and her children shared with relatives. During the search, mother was arrested and cited for obstructing a peace officer. DCFS recommended that, because mother had endangered the children, they be detained from mother, DCFS expressed concern about “continued unresolved anger issues, [her] non-compliance during investigation, [her] lack of insight for [daughter’s sibling’s] medical care, [the] children being withdrawn from school[,] and [her] recent violent criminal activity involving weapons in the home”

On August 28, 2017, DCFS obtained a removal warrant to take the children from mother’s custody. On September 5, 2017, DCFS executed the removal warrant, and the children were

placed in the home of the maternal aunt. On September 8, 2017, DCFS filed a Welfare and Institutions Code section 300 petition, under subdivision (b)(1) on behalf of the children regarding mother. Father was not named in that petition.

On September 8, 2017, father was not present at the arraignment and detention hearing for the original petition. Mother filed a parentage questionnaire identifying father as daughter's father, and the court found him to be the child's alleged father. The matter was continued several times for adjudication.

In the interim, DCFS had made contact with father, and he began visiting daughter in January 2018. The social worker noted father's February 22, 2018 visit with daughter was appropriate but daughter appeared uninterested in bonding with father. Father's visitation was inconsistent due to his work schedule.

On March 15, 2018, father appeared for the first time; counsel was appointed for him, and the court found that he was daughter's presumed father. The court ordered monitored visitation for father with DCFS discretion to liberalize the visits, and ordered DCFS to provide transportation assistance to father.

2. *Domestic Violence by Father*

On March 23, 2018, father engaged in domestic violence with his girlfriend at a Starbucks. Father struck his girlfriend after the two argued when he expressed his intention to get back together with mother. The girlfriend indicated that it was the first incident of domestic violence between them. Daughter was not present during the incident, nor were any of the other children. On March 27, 2018, father suffered a misdemeanor conviction for domestic violence related to this incident. He was sentenced to 36 months of probation, and released on March 29, 2018. During the investigation, mother denied any domestic

violence with father. Father initially denied having a domestic violence incident with his girlfriend to the social worker.

On May 30, 2018, DCFS filed a first amended petition adding the allegation that father was convicted of domestic violence in March 2018. Count b-3, which pertained only to father, stated: “[Father] was arrested on 3/23/18 for domestic violence. The father was convicted of [Penal Code section] 243 (E)(1) [battery on a spouse or cohabitant] on 03/27/18 and is on probation. Such violent conduct on the part of the father against the victim endangers the child’s physical health and safety and places the child at risk of serious physical harm, damage and, danger.”

In May 2018, the dependency investigator reported daughter had been released to mother’s custody. DCFS recommended father be offered enhancement services and monitored visits by a DCFS-approved monitor. On May 31, 2018, the juvenile court ordered two-hour visits twice a week for father.

In August 2018, DCFS noted father had not enrolled in or completed programs to address “case issues.” The dependency investigator attempted to contact father by telephone and e-mail in July and August 2018, but was unsuccessful. Father last contacted the social worker on June 25, 2018.

3. *Jurisdictional Finding and Custody Order*

At the October 9, 2018, adjudication hearing, the juvenile court admitted into evidence DCFS reports with attachments, the focus of which was conduct by mother and one of the other children’s fathers, none of which is directly relevant to the present appeal. The documents also contained the information described above regarding father.

DCFS argued for the court to sustain the allegation against father: “As to (B)(3) the father . . . was just convicted of domestic violence. The domestic violence was apparently with the

girlfriend. That is one of the reasons they were – the actual reason they were fighting, according to the police report, is because he was telling his girlfriend that he was getting back with the mother on this case. [¶] So the Department is asking the court to sustain the domestic violence charge against [father], as we believe that places the children at risk. [¶] . . . I believe he was only convicted within the last couple months. I don't remember exactly what the date was. It was very recently. I do believe that that does place these children at risk as well."

Father's counsel asked the court to dismiss count (b)(3). Counsel argued: "This is based on an arrest which happened in March of this year. The conviction, just to be clear, was apparently March 27 of this year. That's . . . over six months ago. There's not been a reporting of any incidents since then. [¶] Further, if the court reviews the police report, it is actually noted that [the victim] and my client do not have children together and no children were present during this altercation. [¶] There [has] not been [a] showing of any nexus of risk to my client's child [¶] There's been no evidence shown that there's been any sort of incident like this in front of his child or any other, so I'd ask it be dismissed due to lack of nexus, and if not, based on the fact that there's no current risk given it has been actually a review period since this incident. Nothing further has been reported, and it's under the jurisdiction of the criminal court at this point."

Daughter's counsel requested the juvenile court sustain the domestic violence allegation regarding father because there was no evidence father had addressed his domestic violence issues by either completing an anger management or domestic violence program.

The juvenile court sustained the count (b)(3) "based on the statements in the report of witnesses who did see the domestic violence altercation, and [because] there is no evidence that he

has addressed those domestic violence issues and the children are at risk by being exposed to domestic violence in his home.” The court dismissed the allegations against mother and found her to be nonoffending.

For disposition, the juvenile court admitted into evidence the same DCFS reports with attachments. Mother’s counsel, joined by daughter’s counsel, requested the juvenile court terminate jurisdiction with a family law order giving mother custody of the child. Father’s counsel requested the case remain open so that he could participate in services. DCFS counsel requested the juvenile court maintain jurisdiction also so father could receive services.

The juvenile court stated its intent to terminate jurisdiction with a custody order. The court asked for recommendations on the contents of the custody order. DCFS requested monitored visits for father. Mother’s counsel requested sole legal and physical custody of daughter and suggested four-hour weekly visitation as arranged by the parents with 24-hour notice. Father’s counsel, joined by daughter’s counsel, requested joint legal custody and four-hour, twice weekly visits.

The juvenile court ordered jurisdiction terminated with a family law order granting mother sole physical custody of daughter, with joint legal custody of the child to the parents. The juvenile court ordered “monitored visits to father, minimum of twice a week for four hours, with 24-hour notice and schedule to be arranged by the parents.”² Mother was not to monitor father’s visits.

Father timely appealed.

² Despite its oral pronouncement, the juvenile court omitted the word “minimum” in its written custody order. This is a point of contention for father.

DISCUSSION

1. Jurisdiction Was Supported by Substantial Evidence

Father argues that the court erred in finding jurisdiction over his child pursuant to section 300, subdivision (b), asserting there is no risk of harm to daughter. We review the juvenile court's jurisdictional findings for substantial evidence. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 966.) "Substantial evidence is relevant evidence which adequately supports a conclusion; it is evidence which is reasonable in nature, credible and of solid value." (*In re R.C.* (2012) 210 Cal.App.4th 930, 941.) Although substantial evidence may consist of inferences, the inferences "must be 'a product of logic and reason' and 'must rest on the evidence' [citation]; inferences that are the result of mere speculation or conjecture cannot support a finding [citations].'" (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393–394, italics omitted.) Conflicts in the evidence and reasonable inferences are resolved in favor of the prevailing party. (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.) "[I]ssues of fact and credibility are questions for the trier of fact." (*Ibid.*)

Section 300, subdivision (b)(1) authorizes jurisdiction 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, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left" (§ 300, subd. (b)(1).) "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 Alysha S.* (1996) 51 Cal.App.4th 393, 399.)

“ ‘While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.’ [Citation.] Thus, domestic violence between a child’s parents may support the exercise of jurisdiction only if there is evidence that the violence harmed the children or placed them at risk of harm, and ‘the violence is ongoing or likely to continue’ [Citation.] Indeed, ongoing domestic violence in the household where children are living, standing alone, ‘is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.’ ” (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1453–1454.)

Here, there was substantial evidence of a risk of harm to the child. First, there was a very serious incident of domestic violence between father and his live-in girlfriend just six months before the jurisdiction hearing. The incident emanated from a conversation where father told his girlfriend he wanted to get back together with mother. Second, mother and father have a history of domestic violence that was never addressed with services (albeit mother appears to be the aggressor in these incidents). Third, father denied the domestic violence despite his conviction, and never complied with the domestic violence treatment ordered by the court. Father’s unaddressed domestic violence toward his girlfriend and the mother of his child poses a significant danger that the domestic violence will continue and risks serious harm to his child.

2. The Written Custody Order is to be Amended to Conform with the Juvenile Court’s Oral Pronouncement

Father argues the juvenile court’s custody and visitation order was incorrect as to the frequency and duration of visits. The court orally ordered: “Monitored visits to father, minimum of

twice a week for four hours, with 24-hour notice and schedule to be as arranged by the parents.” The October 12, 2018 written custody order omitted the word “minimum,” and stated: “Father is to visit the minor two times per week for 4 hours with at least a 24 hour advance notice to mother. Dates and times of visit will be as arranged by parents.”

We agree there was a transcription error in the minute order and remand for the juvenile court to modify its minute order to include the word “minimum,” in conformity with its oral pronouncement. (See *In re D.H.* (2016) 4 Cal.App.5th 722, 725 [“the part of the record that will prevail is the one that should be given greater credence in the circumstances of the case”].)

To the extent defendant complains he cannot set up visitation because he does not have mother’s confidential address or a means to contact her, the record indicates otherwise. As noted in mother’s brief, mother’s telephone number was not confidential and is in the record. To the extent father has difficulty setting up visitation, this is an issue to be taken up with the family law court.

DISPOSITION

The court’s jurisdictional finding is affirmed. We remand for the juvenile court to modify its minute order on custody to state that father is to receive a “minimum of twice a week for four hours, with 24-hour notice and schedule to be as arranged by the parents.” We affirm the custody order on all other grounds.

RUBIN, P. J.

WE CONCUR:

BAKER, J.

MOOR, J.