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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re K.A., a Person Coming Under
the Juvenile Court Law.

B277442

(Los Angeles County
Super. Ct. No. CK55505)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.A.,

Defendant and Appellant

APPEAL from an order of the Superior Court of Los
Angeles County, Margaret Henry, Judge. Affirmed.

Linda Rehm, under appointment by the Court of Appeal,
for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

Defendant and appellant R.A. (Father) is the father of two sons: 12-year-old Kody (Kody), the child who is the subject of this appeal, and his five-year-old half-brother Ryan.¹ The juvenile court sustained allegations that Kody was a child described by Welfare and Institutions Code section 300.² The court found (1) Father's failure to obtain medical care for Ryan demonstrated Kody's health and safety was in jeopardy; and (2) Father failed to protect Kody when he repeatedly allowed Ryan's mother to supervise both boys in violation of a juvenile court custody order—which in one instance resulted in Kody being struck in the head by a bicycle helmet the mother threw at him. We consider whether substantial evidence supports the juvenile court's finding of jurisdiction.

I. BACKGROUND

A. *Prior Dependency Proceedings Involving Kody and Ryan*

Kody and Ryan have both been the subjects of prior dependency proceedings. In 2004, the juvenile court sustained a section 300 petition that alleged Kody's mother (who is not the aforementioned mother of Ryan—the boys have separate mothers) had a history of substance abuse and was a methamphetamine user, which interfered with her ability to provide appropriate care and supervision for Kody and placed him at risk of harm. The juvenile court ordered services for

¹ These were the boys' ages at the time dependency proceedings commenced.

² Statutory references that follow are to the Welfare and Institutions Code.

Kody's mother and unmonitored visitation for Father. Juvenile court jurisdiction was terminated in 2006, and Kody was ordered placed in his parents' custody.

Approximately four years later, in 2011, the Los Angeles County Department of Children and Family Services (DCFS) petitioned the juvenile court to assume jurisdiction over Ryan, who was then born with a positive toxicology screen. Ryan's mother, Anna I., tested positive for methamphetamine use at the time of Ryan's birth, as well as on two prior occasions during the pregnancy. The DCFS petition alleged jurisdiction over Ryan was appropriate in light of Anna's conduct and because Father reasonably should have known of Anna's substance abuse. The juvenile court assumed jurisdiction over Ryan, terminated Anna's reunification services, and closed the case in 2012 with a family law order granting Father sole physical and legal custody of Ryan. Importantly for our purposes, the order closing the case in 2012 granted Anna only monitored visitation with Ryan.

*B. DCFS Subsequently Receives Another Referral
Concerning Kody and Ryan*

Five years after the 2011 proceedings involving Ryan, DCFS received a referral raising concerns about the well-being of Kody and Ryan. According to the referral, Father permitted multiple adult-age methamphetamine users to stay in his home with Kody and Ryan. Father's home was also reportedly in disarray and was littered with trash and piles of clothing. The referring party further alleged Anna was also living in the home and she often yelled at the children "after coming off methamphetamine."

DCFS investigated in response to the referral. The assigned social worker spoke to Father by phone and asked to schedule an in-person meeting with him and the two boys. Father told the social worker that Ryan was with Anna in Santa Clarita for three or four days, but Father and Kody could meet the following day.

In the meantime, the assigned social worker contacted another social worker who had recently investigated a referral alleging Anna physically abused Kody. The other social worker said Father and Anna were living together and Kody had reported Anna threw a bicycle helmet at him, which hit him in the head. According to the other social worker, Anna admitted she had thrown the helmet at Kody after he first threw it at her, but she said she had not “mean[t] to hit him.”

When the assigned social worker went to Father’s home to interview him and Kody, she observed the home “appeared to be in a very dirty[,] cluttered condition . . . [with] piles of clothing and items in every room in the house that were at least four to five feet tall.”³ The kitchen was also infested with roaches. Father denied Anna lived in the home but admitted she “visits the home for three or four days at a time.” Father also told the social worker that Anna would watch Ryan while Father was working. When the social worker responded that Anna’s unrestricted access to Ryan was in violation of a prior juvenile court order prohibiting unmonitored visits between Anna and Ryan, Father replied that he believed the court order allowed him to grant “[Anna] unmonitored visits at his discretion.” Father

³ Father told the social worker he had just lost his storage unit and that was why there was so much clutter in the home.

denied any drug use by either himself or Anna, and he agreed to submit to on-demand drug tests.

The social worker also interviewed Kody in his bedroom during this visit. The social worker asked Kody who lived in the home, and Kody replied that Father, Ryan, Anna, his four cousins, and their mother and father all lived in the home. Kody also disclosed that he shared his room about one day a week with a family friend who was “homeless.” Kody reported spending most of his time outside the house and he said he regularly went to an abandoned building with his friends who “fe[d] and t[ook] care of him.”

The social worker visited the home again five days later and interviewed Anna. Anna reported she lived in Santa Clarita but stayed at Father’s home “about twice per week” when she visited Ryan. When the social worker mentioned the juvenile court order prohibiting unmonitored visitation between her and Ryan, Anna responded that Father could allow “unmonitored visitation at ‘his discretion.’” Anna reported that Ryan suffered from eczema, allergies, and asthma. After the social worker expressed concern that the dirty cluttered condition of the home might affect Ryan’s health, Anna responded that “[Ryan] is up to date with his medical care at this time and there are no concerns.” Anna denied any drug or alcohol use and agreed to submit to an on-demand drug test.

The social worker then interviewed Ryan (then almost five years old) and noted his left eye did not focus correctly. Ryan did not respond to the social worker’s questions with understandable answers.

During the DCFS investigation, the assigned social worker also spoke to a medical assistant at a community clinic that had

provided medical care services to Ryan. The staff member at the medical provider noted Ryan had been last seen at the clinic in August 2015 when he was observed to have asthma, anemia, and strabismus (or “lazy eye”). She also reported the physician who treated Ryan in August 2015 had prescribed a three-month supply of Albuteral (a drug used to treat asthma symptoms), which “should have run out,” and the staff member was concerned because she “did not know where the family would get medication for [Ryan].” During this conversation, the staff member related that Ryan’s treating physician had ordered an allergy panel and requested the parents follow up by taking the child for lab testing but the parents “did not follow through with this,” and had also failed to follow through on a referral to an ophthalmologist to treat Ryan’s strabismus. The staff member expressed concern that Ryan had not been seen at the clinic since August 2015, since asthma patients should be seen about once per month.

C. DCFS Initiates Dependency Proceedings

On May 17, 2016, DCFS filed a four count petition pursuant to section 300, subdivisions (b) and (j) alleging Kody came within the jurisdiction of juvenile court.

Count b-1, which was later dismissed by the juvenile court, alleged the unsanitary environment at Father’s home endangered Kody.

Counts b-2 and b-3 alleged there was a substantial risk Kody would suffer serious physical harm or illness as a result of Father’s failure or inability to adequately supervise or protect Kody. Specifically, count b-2 alleged “[Ryan] is diagnosed with asthma and strabismus. . . . [Father] failed to obtain

recommended medical care for [Ryan]. . . . [Father's] medical neglect of [Ryan] endangers [Kody's] physical health and safety and places [Kody] at risk of serious physical harm, damage, danger and medical neglect." Count b-3, as later amended by the juvenile court, alleged Father repeatedly violated court orders when he left Kody and Ryan alone with Anna and that such violations "resulted in [Kody] being struck by [Anna] with a helmet." The count went on to allege "[t]he violation of court orders by [Father] endanger[ed Kody's] physical health and safety and plac[ed Kody] at risk of serious physical harm, damage, danger and physical abuse."

Count j-1, in language identical to count b-2, alleged that Father's medical neglect of a sibling (Ryan) placed Kody at substantial risk of abuse or neglect.

At the initial detention hearing, the juvenile court found Father to be the presumed father of Kody and ordered Kody remain released to Father pending adjudication of the section 300 petition.

In the weeks following the detention hearing, a DCFS social worker conducted further interviews with Kody, Father, and Anna in connection with preparing a jurisdiction/disposition report for the juvenile court. As relevant here, the interviews detailed the incident in which Anna cut Kody's lip by throwing a bicycle helmet at him and alleged neglect in ensuring Kody and Ryan were receiving proper medical care.

When the social worker asked Kody about the bicycle helmet incident with Anna, Kody stated he threw the helmet at Anna and she threw it back at him, and the helmet hit him "on the arm, and bounced up and hit his lip." Kody reported sustaining a "small cut on the inside of his lip," before stating

that Father “saw the incident” and scolded him for throwing the helmet while Father also told Anna “what she did was wrong.”

When Father was asked about the bicycle helmet incident, he stated he “was in the kitchen and heard arguing and when he walked out to stop [Kody and Anna], [Anna] had already thrown the helmet at [Kody].” Father reported he told Anna what she did was wrong “and that he would not allow her to do that to [Kody] regardless of [Kody’s] behavior.”

Anna admitted she threw the helmet at Kody “because [he] threw it at her first.” When asked if Kody’s actions excused her own behavior, Anna initially responded that Kody is “too disrespectful and is out of control” before acknowledging what she did was wrong.

Regarding the topic of obtaining medical care for Kody, Father stated “he is certain that [Kody] is up to date” with his medical care. However, when the social worker contacted Kody’s medical provider the next day, the social worker learned that Father had missed a scheduled appointment for Kody, that this was the second appointment in a row Kody had missed, and that Kody was “overdue for a physical and immunizations.” When the social worker told Father about the issues disclosed by the medical provider, Father stated he would call to schedule an appointment.

As to Ryan’s medical care, Father stated he tried to make an ophthalmology appointment for Ryan after the initial referral but the clinic staff gave him incorrect contact information.⁴

⁴ Anna claimed she previously called Ryan’s healthcare provider about the ophthalmology referral and the provider had agreed to send a new referral. However, when later contacted by the social worker, a representative of the healthcare provider

Father reported Ryan had recently been seen by his medical provider and was scheduled to have an allergy screening test performed. The social worker called Ryan's medical provider the next day and talked with a staff member who reported Father was a "no show" for the scheduled appointment. Father stated he was unaware of that appointment, but he had taken Ryan to have his allergy testing done at another medical testing facility.

D. The Jurisdiction and Disposition Hearing

The juvenile court continued the first scheduled date for the jurisdiction hearing to research the status of prior court juvenile court orders entered as to both Kody and Ryan, including the aforementioned order giving custody of Ryan to Father with only monitored visitation for Anna. DCFS filed a last minute information report prior to the jurisdiction hearing, noting that while Father had submitted to two drug tests, and the results were "clean," he had failed to conduct the drug tests on the dates requested by DCFS and had waited four days or more to test.

When the jurisdiction hearing commenced, the juvenile court received several DCFS reports in evidence and took judicial notice of the custody order entered during the prior dependency proceeding that gave custody of Ryan to Father and provided Anna with only monitored visitation rights. During the hearing, Father also opted to testify.

Father admitted he knew the prior custody order prohibited unmonitored visits between Anna and Ryan (but Father claimed his attorney in the prior dependency case advised

reported there was no record of such a call in the provider's records, which "would have been documented."

him he nonetheless had discretion to permit such visits). Father also conceded he knew Anna had not completed any substance abuse treatment programs since the juvenile court entered the prior custody order to close the dependency case alleging he failed to protect Ryan from a risk of harm arising from her methamphetamine use. Nevertheless, Father testified Anna “would probably stay [at his home] about one or two days out of the week” and he would put Anna “in charge of both kids” (i.e., Kody and Ryan) when he had to go work or school. According to Father, the incident in which Anna hit Kody with the helmet did not occur on one of the occasions while he left her with the boys on her own; Father explained he was at home with Anna at the time, albeit in another room so he was not watching when it happened.

After Father completed his testimony, and after hearing argument from counsel, the juvenile court sustained counts b-2 (risk to Kody from neglect in obtaining medical care), b-3 (as amended, risk to Kody from leaving Anna alone with Kody and Ryan in violation of court order), and j-1 (risk to Kody from Father’s medical neglect of Ryan). As to the b-3 count in particular, the juvenile court noted Father’s testimony during the hearing revealed “he’s been leaving [Anna] alone with the children as his babysitter.” The court further observed that the incident where Kody was injured by the thrown helmet was “symptomatic” of a larger issue: “[T]hat is an example of what happens when you violate court orders with respect to somebody having monitored visits . . . [who has] not done programs in the meantime. But the real offense is violating the court orders that somebody needs to be monitored. It’s not safe when the social worker and the court have said, don’t do it. There’s a reason.”

The court found Kody was a child described by section 300 but opted not to declare him a dependent child. Instead, the court ordered DCFS to provide services to keep the family together and placed the children and parents under the supervision of the social worker for six months pursuant to section 360, subdivision (b).⁵

II. DISCUSSION

Father contends the juvenile court's jurisdictional findings should be reversed because the trial court had no basis to conclude there was a substantial risk Kody would suffer serious physical harm as a result of Father's failure to supervise or adequately protect him. We hold to the contrary. Substantial evidence supports the juvenile court's decision to find count b-3 of the dependency petition proven, including evidence that Father repeatedly violated a juvenile court order when he allowed Anna to babysit both boys with no other adult present (the order prohibited unmonitored visitation with Ryan). Father's decision to leave Kody and Ryan in the care of Anna, who he knew to have substance abuse problems that had not been fully treated, exposed Kody to a substantial risk of suffering serious physical harm—as the helmet throwing incident demonstrates all too well.

⁵ At the conclusion of the disposition hearing, the juvenile court scheduled a further hearing at which it would dismiss the petition “if everything [has gone] well.” A subsequently issued minute order, of which we have taken judicial notice at Father's request, indicates everything has not since gone well. Kody was declared a dependent of the juvenile court and was still under juvenile court jurisdiction as of March, 17, 2017. We accordingly reach the merits of Father's contentions on appeal.

Because we hold substantial evidence supports one of the alleged bases for juvenile court jurisdiction, we will affirm the juvenile court's order without discussion of the other findings that supported the determination that Kody was a child described by section 300. (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

A. *Standard of Review*

“In reviewing a challenge to the sufficiency of the evidence supporting the [juvenile court's] 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.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193 [].) “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].” [Citation.]” (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321 [].)” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) Father, as the party challenging the juvenile court's findings and orders, bears the burden to show there was no evidence of a sufficiently substantial nature to support those findings and orders. (*In re D.C.* (2015) 243 Cal.App.4th 41, 52.)

*B. Substantial Evidence Supports the Juvenile Court's
Decision to Sustain Count b-3*

A juvenile court may assert jurisdiction over a child pursuant to section 300, subdivision (b)(1) 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, 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).)

The elements of a jurisdictional finding under section 300, subdivision (b) are: “(1) neglectful conduct by the parent; (2) causation; and (3) ‘serious physical harm or illness’ or a ‘substantial risk’ of serious physical harm or illness. (*In re Cole Y.* (2015) 233 Cal.App.4th 1444, 1452 [].) When the jurisdiction allegations are based solely on risk to the child, that risk must be shown to exist at the time of the jurisdiction finding.” (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 993.) “Although ‘the question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm’ [citation], the court may nevertheless consider past events when determining whether a child presently needs the juvenile court’s protection. [Citations.] A parent’s past conduct is a good predictor of future behavior.” (*In re T.V.* (2013) 217 Cal.App.4th 126, 133; see also *In re F.S.* (2016) 243 Cal.App.4th 799, 814-815.)

Father cites *In re David M.* (2005) 134 Cal.App.4th 822 (*David M.*) in support of his contention that DCFS “failed to define any specific, current risk of physical harm to [Kody] based on . . . [Anna’s] previous unmonitored contact with the children.”

In *David M.*, the Court of Appeal reversed a jurisdiction finding where the appellate record contained insufficient evidence to demonstrate the mother's mental and substance abuse problems and the father's mental problems were tied to any actual harm or to a substantial risk of serious harm to the minors who were the subject of that appeal. (*Id.* at pp. 829-830.)

Here, and in contrast to the situation in *David M.*, the record contains substantial evidence of a nexus between Father's conduct and a current risk of serious harm to Kody. Father created a substantial risk to Kody's physical health and safety by entrusting his care to an individual with a long history of substance abuse and who was for that reason subject to a court order prohibiting unmonitored visitation with Kody's sibling. Indeed, Father's testimony during the jurisdiction hearing and the argument presented by his attorney indicated Father continued to allow Anna to supervise the children alone even after initiation of the current dependency proceedings—despite the fact that Kody had been actually harmed by Anna when she threw a bicycle helmet that hit him in the face. Father's disregard of the terms of the prior custody order, his concomitant decision to entrust Kody's care to Anna, and the actual harm suffered by Kody at Anna's hand are facts that constitute substantial evidence supporting the juvenile court's jurisdiction finding under section 300, subdivision (b)(1).

DISPOSITION

The order of the juvenile court is affirmed.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

DUNNING, J.*

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