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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re E.P. et al., Persons
Coming Under the Juvenile
Court Law.

B287951
(Los Angeles County
Super. Ct. No. 17CCJP01541)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

L.P.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County. Victor Greenberg, Judge. Affirmed.

Michelle L. Jarvis, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Kim Nemoy, Principal Deputy County Counsel, for Plaintiff and Respondent.

In this juvenile dependency case, defendant and appellant L.P. (father) challenges the juvenile court's jurisdictional findings and orders declaring his eight-year-old daughter E.P. and five-year-old son C.P. dependents of the court. As explained below, we conclude substantial evidence supports the juvenile court's findings and orders. Accordingly, we affirm.

BACKGROUND

1. The Domestic Violence Incident

On the evening of September 9, 2017, the children's mother (mother) and father had an argument that became, for them, uncharacteristically violent. The family was planning to go out for dinner after father arrived home from work. When father arrived home, however, he was upset and went into the bedroom. Mother followed him and they began to argue. Their argument became physical. Father threw mother on the bed and got on top of her. He hit her face and upper arm, causing visible injuries. During the fight, mother also hit her head on the bed post, causing further noticeable injury.

The children were present when mother and father began to argue and witnessed some of the physical altercation. During their 10 years together, mother and father had never before had a physical fight.

Mother called the police, who arrested father for domestic battery. Father was held for a couple of days, then released. Eventually, the charges were dropped. On the night of the incident, mother obtained an emergency protective order against father, which lasted approximately one week. Sometime after the emergency protective order expired, father returned home.

2. Dependency Proceedings

a. Initial Investigation

The September 9 incident generated a referral to the Los Angeles County Department of Children and Family Services (Department). A Department social worker interviewed mother and daughter on September 21, 2017. Mother described the September 9 incident and stated she did not know why father was upset that night. Although the emergency protective order had expired, mother said father was not living at home but had visited with the children. Daughter stated that, on September 9, she heard a lot of screaming and witnessed father hitting mother. Daughter cried when she described the September 9 incident to the social worker and said she had been scared of father that night. Although the social worker spoke with two neighbors and a staff member at the children's school, no one was able to provide much information about father, who one neighbor described as "very quiet."

On October 25, 2017, after multiple unsuccessful attempts over many weeks to contact father, the social worker made an unannounced visit to the family's home and found father there. The social worker interviewed father and mother together. Father stated "he had been cleared of criminal charges, therefore he did not understand why the Department was still involved." The social worker explained that, given the severity of the

September 9 altercation, the Department had concerns related to father's temper. In response, father "only smiled [and] stated he did not view the incident as severe." Father did not consent to temporary removal of the children or to a request that he move out of the home temporarily. He explained his attorney in the criminal case told him he could return home and he would not move out "just because the Department wanted." The social worker reported father "smirked" at her and said he did not care about differences between the criminal and dependency systems.

When the social worker asked mother how she would protect the children, mother asked to speak with father alone. After mother and father spoke privately for approximately 10 minutes, father reported he would not leave the home and mother said she did not know what to do. Mother had become quiet and kept her head down.

No one reported a history, or any evidence, of domestic violence or substance abuse in the family. Neither mother nor father had a history with the criminal or dependency courts. The children appeared happy and healthy. Nonetheless, in light of the severity of the September 9 incident, father's statements and attitude about the incident, and mother's demeanor during the interview with father, the Department determined the family needed supervision and believed mother may be a victim of abuse. The social worker reported: "The father has not cooperated with the Department throughout the course of the investigation. The Department was unable to gather any information as to the father, as the father did not provide any collaterals [*sic*]. The children's school reported to have little or no interaction with the father. The one time the Department met with the father, the father appeared to take the situation as a

joke. The father reported he did not view the incident as something that needed so much attention, the father refused to acknowledge the severity of the incident and denied accountability for it. It is a concern to the Department, that the father does not recognize his actions and appears to show no remorse towards them.”

b. Section 300 Petition

On November 2, 2017, almost two months after the parents’ September 9 altercation, the Department filed a petition under Welfare and Institutions Code¹ section 300, subdivisions (a) and (b) on behalf of the children. The two counts of the petition were identical and alleged mother and father had a violent altercation in the presence of the children, father’s violence toward mother endangered the children, and mother failed to protect the children from father.

The detention hearing was held the next day. The juvenile court expressed “shock” that the Department had not sought to remove the children from father earlier. The court ordered the children detained from father and released to mother under the Department’s supervision. Father was ordered not to reside in the home with mother and the children. The court ordered the Department to provide family maintenance services for mother and family reunification services for father, including domestic violence counseling and drug testing. At the hearing, the court addressed father and explained that although the court could not order father to participate in family reunification services at the

¹ Undesignated statutory references are to the Welfare and Institutions Code.

time, his participation in such services could assist the court in determining father's seriousness and ability to return home.

c. Adjudication and Disposition

After one continuance, a combined adjudication and disposition hearing was held on January 25, 2018. Prior to the hearing, the Department submitted its jurisdiction and disposition report to the court. A Department social worker had conducted further interviews, which reiterated what the Department had reported previously. The social worker was able to interview the son, who stated he saw father hit mother on her face and back, which scared him. When mother was interviewed, she stated she was not scared to talk in front of father and that he did take the September 9 incident seriously. She explained, "He doesn't have the capacity to laugh at things like that. He is known for being quiet and very serious in general. Most people that know him know that he is serious and timid." Mother also indicated that she had "an explosive anger problem" and would benefit from domestic violence classes, as would father.

Father also spoke again with the social worker. Father stated that, on the evening of September 9, he was tired and wanted to rest before going out to dinner with the family. When he and mother began to argue in the bedroom, father explained he tried to leave the room but mother grabbed his arms and would not let him leave. He said something to mother that she did not like, at which time, according to father, mother "exploded." She hit father's face, picked up something from the counter and hit him on the head with it, and she scratched his back. In response, father pushed mother onto the bed and began hitting her. Father reported that he and mother had since forgiven one another and "promised each other that if we get mad

like that again, that we will allow the other person to leave and get some space so things don't get like that again." Father told the social worker that mother had a "strong" character and could "be aggressive and gets angry easily." However, he explained September 9 was the first time either of them had been physical with the other and he acknowledged they should have given each other time to calm down.

Father also told the social worker that, although he did laugh when he was interviewed initially by the Department, it was not because he did not take the case seriously. Rather, father stated "it was more because I was in shock and could not believe this was all happening. It was not to make fun of anyone or to make it seem I wasn't taking it serious. It's not good that it was taken in the wrong way, but I was not trying to make fun of anything and I was just in shock that it was being taken to a level that it was, especially since my criminal case was closed." The Department reported that father "was adamant that he did not intend to make a joke of the situation or to appear non-serious and was mostly shocked that the Department felt the need to [involve the court]." He explained "he is very animated with his face when he hears something he does not agree with." Father believed he and mother would benefit from therapy services. He stated the September 9 incident "opened our eyes to how serious this can all be."

As of December 7, 2017, father had not enrolled in any services. Nonetheless, the Department reported father had "voiced his complete willingness and cooperation" to address the issues that led to the Department's involvement. Father had appeared for a drug test, but through no fault of his own he was unable to test that day. He also had regular unmonitored visits

with the children, with no reported problems. Despite father's improved attitude and lack of criminal or dependency history, however, the Department remained "concerned as to what caused the father to behave in such an extreme behavior that is not characteristic of his normal behavior and his early reactions to the involvement of the Department and Court." The Department believed the juvenile court should sustain the petition and that it was in the children's best interests that father enroll in services before returning home.

Prior to the adjudication, the Department filed a last minute information with the court indicating that, on December 11, 2017, father had enrolled in a domestic violence program and a parenting program. Father had attended two sessions of the 52-session domestic violence program and one session of the parenting program. The Department had not yet received any progress reports from either program. The Department also reported father had failed to show for his four random drug tests. He did, however, report for an on demand test, which returned a negative result.

At the January 25 hearing, the juvenile court struck the subdivision (a) count in its entirety as well as the reference in the remaining subdivision (b) count to mother's alleged failure to protect the children. The court also amended the subdivision (b) count to state father "placed his hands on mother's neck" instead of that father had "choked" mother and deleted reference to father's arrest. Over father's and mother's objections, the court sustained the petition as amended and declared the children dependents of the court under section 300, subdivision (b)(1). The court noted "that there was a series of escalating arguments. The father originally told a story that the mother had attacked

him. He was not initially cooperative although the court does note he has begun his [domestic violence] classes. He's just in the very beginning, so the court does find that there is continuing risk at this time." The court ordered the children released to their parents under Department supervision, permitted father to return home, and ordered the Department to provide family maintenance services. However, the court did not order father to submit to drug testing.

Father appealed from the juvenile court's January 25, 2018 orders sustaining the subdivision (b) count as amended and declaring the children dependents of the court.

DISCUSSION

1. Applicable Law

Under section 300, subdivision (b)(1) (subdivision (b)(1)), a juvenile court may assert dependency jurisdiction and declare a child a dependent of the court when "[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." The court " 'need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.' " (*In re I.J.* (2013) 56 Cal.4th 766, 773.) " 'The purpose of dependency proceedings is to prevent risk, not ignore it.' " (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1104.)

It is not uncommon for courts to assert dependency jurisdiction under subdivision (b)(1) in cases involving domestic violence. " 'Both common sense and expert opinion indicate spousal abuse is detrimental to children.' " (*In re E.B.* (2010) 184 Cal.App.4th 568, 576.) "[D]omestic violence in the same

household where children are living *is* neglect; it 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 Heather A.* (1996) 52 Cal.App.4th 183, 194, disapproved on other grounds in *In re R.T.* (2017) 3 Cal.5th 622, 628.)

Children can be “put in a position of physical danger from [spousal] violence” because, “for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg.” (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 194.)

Nonetheless, although domestic abuse may support the exercise of jurisdiction under subdivision (b)(1), there must be “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 (*Daisy H.*)). “Evidence of past conduct, without more, is insufficient to support a jurisdictional finding under section 300. There must be some reason beyond mere speculation to believe the alleged conduct will recur.” (*In re James R.* (2009) 176 Cal.App.4th 129, 135, disapproved on other grounds in *In re R.T.*, *supra*, 3 Cal.5th at p. 628.)

“ ‘In evaluating risk based upon a single episode of endangering conduct, a juvenile court should consider the nature of the conduct and all surrounding circumstances. It should also consider the present circumstances, which might include, among other things, evidence of the parent’s current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs, or other steps taken, by the parent to address the problematic conduct in the interim, and probationary support and supervision already being provided

through the criminal courts that would help a parent avoid a recurrence of such an incident. The nature and circumstances of a single incident of harmful or potentially harmful conduct may be sufficient, in a particular case, to establish current risk depending upon present circumstances.’ [Citation.] We must have a basis to conclude there is a substantial risk the parent’s endangering behavior will recur.” (*In re John M.* (2013) 217 Cal.App.4th 410, 418–419, disapproved on other grounds in *In re R.T.*, *supra*, 3 Cal.5th at p. 628; *In re J.N.* (2010) 181 Cal.App.4th 1010, 1025–1026 (*J.N.*))

“[D]enial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision.” (*In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044.)

2. Standard of Review

We review the juvenile court’s jurisdictional findings for substantial evidence. (*In re Jonathan B.* (2015) 235 Cal.App.4th 115, 119.) We will affirm if there is reasonable, credible evidence of solid value to support the court’s findings. (*Ibid.*)

“ ‘ “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 I.J.*, *supra*, 56 Cal.4th at p. 773.) Under this standard, our review “ ‘begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if

possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact.’” (*In re David H.* (2008) 165 Cal.App.4th 1626, 1633.) “We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. [Citation.] The judgment will be upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result had it believed other evidence.” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

3. Substantial evidence supports the juvenile court’s jurisdictional findings and orders.

Father argues substantial evidence does not support the juvenile court’s jurisdictional findings and orders. He claims the single September 9 incident of domestic violence was an aberration in his 10-year relationship with mother, the incident occurred more than four months before the jurisdictional hearing with no further endangering incidents, the social worker mistook father’s shock at the Department’s involvement as dismissiveness, he took the matter seriously, and he had enrolled in a domestic violence course and parenting course.

In effect, father invites us to reweigh the evidence that was before the juvenile court, which invitation we decline. (*In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 228.) Although father’s interpretation of the evidence is not unreasonable, we conclude the juvenile court also reasonably considered the evidence, including “‘the nature of the conduct and all surrounding circumstances.’” (*In re John M.*, *supra*, 217 Cal.App.4th at p. 418, disapproved on other grounds in *In re R.T.*, *supra*, 3 Cal.5th at p. 628.) Even as an aberration in an otherwise

nonviolent 10-year relationship, the September 9 incident of domestic violence was severe. Father inflicted multiple noticeable injuries on mother in the presence of the children, both of whom witnessed the violent altercation. Father was arrested as a result of the September 9 incident. Although father later stated he took the matter seriously, his initial reaction to the Department's involvement (whether characterized as shock, indifference, or denial) reasonably concerned the juvenile court. Moreover, although father was cooperative and had enrolled in two courses by the time of the jurisdictional hearing, he had only recently enrolled and had attended two sessions of a 52-session domestic violence course and one session of a parenting program. Although father's participation in these courses is to be commended, his involvement had only just begun, despite the juvenile court's explaining the importance of such services to father at the November 3, 2017 detention hearing. We conclude these facts together constitute substantial evidence supporting the juvenile court's jurisdictional findings.

This case differs from cases on which father relies. For example, contrary to the facts of this case, in *Daisy H.*, *supra*, 192 Cal.App.4th at page 717, a single incident of domestic violence occurred out of the presence of the children and years before the Department filed a section 300 petition. And contrary to father's initial reaction to the Department's involvement here, in *J.N.*, *supra*, 181 Cal.App.4th at pages 1017–1018, where on one occasion the father drove drunk with his children in the car and the mother acquiesced in the father's actions, both parents were quick to accept responsibility and acknowledge their mistakes, and there was no evidence either parent had a substance abuse problem.

DISPOSITION

The January 25, 2018 orders are affirmed.
NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.