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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

In re N.R., a Person Coming
Under the Juvenile Court Law.

B294772
(Los Angeles County
Super. Ct. No.
18CCJP06872A)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

K.P.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Danette J. Gomez, Judge. Affirmed.

Elizabeth Klippi, under appointment by the Court of Appeal, for Defendant and Appellant K.P.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, William D. Thetford, Principal Deputy County Counsel for Plaintiff and Respondent.

K.P. (Mother) appeals from the juvenile court's orders exercising dependency jurisdiction over her eight-year-old son N.R. and removing him from her custody for failing to protect him from his father's domestic violence and substance abuse. We conclude substantial evidence supports the orders and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. Relevant Facts

After Mother and N.R.'s father (Father) had been dating for approximately eight years, Mother gave birth to N.R. in April 2010.

Following a series of misdemeanor convictions, in 2016 Father was found guilty of a felony, transportation of a controlled substance for sale (Health & Saf. Code, § 11379, subd. (a)). Upon his release from prison in November 2017, Mother invited Father to move in with her and N.R.

On September 10, 2018, Mother and Father argued in the bedroom over a methamphetamine pipe she had discovered in his clothing. The argument escalated. Father punched a hole in the bathroom door, shattering a closet mirror. Frightened, Mother, who was three months pregnant, telephoned the police. Father yelled at her to hang up the phone, so Mother disconnected the call and told Father to leave. The argument continued; Mother again telephoned the police. After trying to grab the phone from her hand, Father advanced on Mother and began hitting her as she retreated into the living room, which was occupied by N.R. At one point, Father pushed Mother against a doorknob and Mother yelled at N.R. to go into the bedroom. N.R. complied. Mother then stood by the front door to bar Father from leaving the home. In response, Father yanked a lanyard off Mother's neck, punched

her in the face, pushed her away from the door and left. Mother suffered pain to her back and face and a laceration to an eyebrow and a finger. Father was not at the home when the police subsequently arrived. The responding officers assisted Mother in obtaining an emergency protective order.

In a police interview on September 20, 2018, ten days after the physical altercation, Mother said she and Father had been involved in two prior unreported domestic violence incidents. Interviewed on September 25, 2018 by a social worker for the Los Angeles County Department of Children and Family Services (Department), Mother denied that she had told the police there were prior domestic violence incidents involving Father. In a later interview, Mother told another Department social worker that when Father grabbed the lanyard around her neck, he “accidentally punched her in the face.” Mother denied Father had struck or pushed her body during the altercation.

On October 3, 2018, Mother obtained a temporary restraining order (TRO) against Father for the protection of herself and N.R. Later that day, she met Father at a park and gave him some of his belongings and never mentioned the TRO.

On October 4, 2018, Mother telephoned Father to ask for rent money. She then went to his residence and told him about the TRO. They argued. Father gave Mother some rent money, and she left. Mother soon returned and told Father she had lied about having obtained a TRO.

Father acknowledged he had argued with Mother, but denied physically assaulting her at any time during their relationship. He also denied punching a hole in the bathroom door or breaking a mirror and said he did not know why Mother had called the police.

II. Procedural Background

The Department filed a petition asking the juvenile court to exercise dependency jurisdiction over N.R. because Mother and Father's history of domestic violence placed N.R. at serious risk of sustaining serious physical harm (under Welfare and Institutions Code¹ section 300, subdivision (a)) and because such violent conduct by Father and Mother's failure to protect placed N.R. at risk of serious physical harm (under section 300, subdivision (b)(1)). The Department further alleged Father's history of substance abuse and of being under the influence of marijuana in the presence of N.R., as allowed by Mother, constituted a failure to protect and placed N.R. at risk of serious physical harm (under section 300, subdivision (b)(1)).

On October 25, 2018, the juvenile court ordered N.R. detained and placed with two maternal aunts, who would reside with N.R. in the family home. Mother was to move out of the home; Father already resided elsewhere.

The juvenile court issued a TRO against Father on November 1, 2018, and reissued it on November 13, 2018. On December 3, 2018, the court issued a three-year restraining order to keep Father away from Mother.

At the December 17, 2018 jurisdiction/disposition hearing, the juvenile court admitted the Department's reports into evidence. No testimony or other evidence was presented by the parties before the court invited argument by counsel. Mother's counsel argued, "[T]his is a case in which the factual basis for these allegations isn't really in dispute. [Mother] is only listed as a failure to protect." Counsel then asked the court to strike

¹ Further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

Mother from the petition, given the permanent restraining order she had obtained, Father's lack of contact with Mother, and his failure to appear at or otherwise participate in any proceedings to date.

The court declined the request, found true all allegations of the section 300 petition, and sustained dependency jurisdiction. The court also found clear and convincing evidence supported removal of N.R. from Mother's custody and ordered suitable placement. In so ruling, the court explained the September 10, 2018 incident was "rather serious," resulting in injuries. Father struck Mother's face and body with his fist and could have choked her in grabbing the lanyard around her neck. Further, the court noted the incident was the latest in a pattern of domestic violence incidents between N.R.'s parents. The court ordered unmonitored visitation for Mother and required her to participate in a domestic violence victim support group, parenting classes and individual counseling.

Mother filed a timely notice of appeal.

DISCUSSION

I. Propriety of Dependency Jurisdiction

Mother contends the juvenile court's exercise of dependency jurisdiction based on her failure to protect N.R. from both domestic violence and substance abuse must be reversed for insufficient evidence. The Department contends Mother's attack on the jurisdictional findings should be dismissed based on her (counsel's) "admission" at the jurisdiction hearing. Alternatively, the Department maintains the court's exercise of dependency jurisdiction is supported by substantial evidence.

For the reasons discussed below, we conclude Mother has not conceded the merits of her jurisdictional challenge. We also conclude substantial evidence supports the exercise of dependency jurisdiction in this case due to Mother's failure to protect N.R. from domestic violence. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451 [A single basis for exerting jurisdiction over a child is enough to sustain the juvenile court's exercise of that jurisdiction if supported by substantial evidence].) Accordingly, we do not consider whether the implied finding concerning Father's alleged substance abuse is supported by substantial evidence.

II. Purported Concession

Citing *Gonzales v. City of Atwater* (2016) 6 Cal.App.5th 929 (*Gonzales*), the Department asserts the acknowledgment by Mother's counsel that the factual allegations in the section 300 petition "[were not] really in dispute" amounted to an admission of the truth of the allegations and the factual basis for those allegations. Therefore, the Department reasons, Mother has conceded the evidence was sufficient to support the juvenile court's jurisdictional findings.

We disagree. In *Gonzales*, the surviving family members of a pedestrian killed by a motorist sued the City of Atwater, claiming it was liable for the dangerous condition of the intersection. (*Gonzales, supra*, 6 Cal.App.5th at p. 933.) The City relied on a design immunity defense. (*Ibid.*) Because the plaintiff's attorney conceded the design of the intersection was reasonable when the City's plan for it was approved and implemented, however, the Court of Appeal held the

reasonableness of the plan was no longer an issue and reversed the judgment against the City. (*Id.* at pp. 954-955.)

Here, by contrast, although Mother’s counsel acknowledged the truth of the factual allegations, he did not expressly or impliedly concede they were sufficient evidence of Mother’s failure to protect. Because dependency jurisdiction turns on the risk to the child ““at the time of the [jurisdiction] hearing”” (*In re M.M.* (2015) 240 Cal.App.4th 703, 719), the propriety of jurisdiction based on a child’s exposure to domestic violence under subdivisions (a) and (b) of section 300 turns on whether “the violence is ongoing or likely to continue.” (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717.) Immediately following his acknowledgment, Mother’s counsel urged the juvenile court to strike Mother from the petition, arguing the permanent protective order issued against Father removed any future risk of harm to N.R. from Mother’s failure to protect. The issue was not conceded.

III. Jurisdictional Findings – Sufficiency of the Evidence

Among other grounds, a juvenile court may exert dependency jurisdiction over a child if (1) “[t]he 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” (§ 300, subd. (a)); or (2) “[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 . . . to adequately supervise or protect the child” (§ 300, subd. (b)(1)). Exposing a child to domestic violence can risk the nonaccidental infliction of serious physical injury under subdivision (a) of section 300. (*In re*

Giovanni F. (2010) 184 Cal.App.4th 594, 598-599), and can be a failure to protect a child from the risk of such injury under subdivision (b). (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.)

We review the juvenile court's factual findings regarding risk, like all its factual findings, for substantial evidence—that is, evidence which is reasonable in nature, credible and of solid value. (*In re R.C.* (2012) 210 Cal.App.4th 930, 940-941.)

The juvenile court's finding that the risk of domestic violence between Mother and Father was likely to continue is supported by substantial evidence. Father had engaged in a pattern of domestic violence, although Mother only reported the most recent of the three incidents to the police. This latest incident happened in the presence of N.R., during which Father turned from punching a hole in the bathroom door to punching Mother in the face. Although she then obtained a TRO against Father, Mother subsequently violated it twice and lied about its existence to Father. What is more, Mother later minimized Father's violent conduct by claiming his act of punching her in the face was an "accident." While prior domestic violence is not enough by itself to create a future risk to a child, (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1453-1454) past events have "probative value in considering" current risk. (*In re Janet T.* (2001) 93 Cal.App.4th 377, 388.) In this case, Mother's willingness to expose herself, and, critically, N.R., to multiple instances of domestic violence and then not only to lie about it, but also to repeatedly ignore a restraining order, is substantial evidence of risk that she would do so again.

Mother raises two objections to this reasoning. First, she emphasizes there is no risk of future domestic violence because, as she insisted to the Department social worker, the police had

gotten it wrong: contrary to her earlier reported statement to the police, Mother maintains there were no previous incidents of domestic violence involving Father. Mother refers us to her interview with the social worker during which Mother claimed the only physical violence between them occurred on September 10, 2018, and maintained what the police had reported she related about earlier violence was untrue. However, the juvenile court clearly discounted her claims, and issues of fact and credibility are the province of the dependency court. We neither reweigh the evidence nor exercise our independent judgment. (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

Second, Mother asserts this case is analogous to *In re Jonathan B.* (2015) 235 Cal.App.4th 115 and *In re Daisy H.*, *supra*, 192 Cal.App.4th 713. We disagree. To be sure, in those cases, the appellate court concluded there was insufficient evidence of current risk to a child based on previous incidents of domestic violence between the parents. (*In re Jonathan B.*, at pp. 117-121; *In re Daisy H.*, at pp. 715-717.) In each case, however, the children had not been present during the prior domestic violence, which had occurred five years earlier in *In re Jonathan B.* at p. 120, and two to seven years earlier in *In re Daisy H.* at p.717. Not so here.

Mother also equates her case with *In re J.N.* (2010) 181 Cal.App.4th 1010. Again, we disagree. In that case, an appellate court held there was no substantial risk of ongoing harm to the children based on a single, albeit serious, automobile accident caused by their Father, who was driving under the influence when their Mother (also intoxicated) and the children were in the car. (*Id.* at p. 1014.) Unlike the parents in *In re J.N.*, who otherwise exhibited parenting skills sufficient to protect their

children, and were “remorseful” and “willing to learn from their mistakes” (*id.* at p. 1026), Mother minimized the seriousness of the September 10, 2018 incident, claiming Father’s blow to her face was an accident. She also twice met with Father notwithstanding the TRO that was intended to protect both her and N.R.

IV. Propriety of Removal

A juvenile court may remove a child from a parent only if the court finds, by clear and convincing evidence, (1) “there is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the [child] if the [child] were returned home,” and “there are no reasonable means” short of removal “by which the child’s physical health can be protected.” (§ 361, subd. (c)(1); *In re Ashly F.* (2014) 225 Cal.App.4th 803, 809.) As with jurisdictional orders, removal orders are reviewed for substantial evidence. (*In re R.T.* (2017) 3 Cal.5th 622, 633.)

Mother contends substantial evidence does not support the juvenile court’s removal decision. Not so. The same evidence supporting the juvenile court’s finding that Mother’s failure to protect resulted in ongoing risk to N.R. supports the removal order: Mother and Father had a history of domestic violence, which placed N.R. in harm’s way, yet Mother denied or minimized the violence. Mother acted with poor judgment and in disregard of her eight-year-old son’s safety and well-being. The court properly concluded removal was necessary to protect N.R.

DISPOSITION

The juvenile court's jurisdictional and dispositional orders are affirmed.

CURREY J.

We concur:

MANELLA, P. J.

COLLINS, J.