

Filed 3/27/18 In re F.G. CA2/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re F.G., et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

EDWIN G.,

Defendant and Appellant.

B284294

(Super. Ct. L.A. County
No. DK03263)

B284294

APPEAL from an order of the Superior Court of
Los Angeles, Robert S. Draper, Judge. Affirmed.

Jamie A. Moran, under appointment by the
Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

Edwin G. (Father) appeals from an August 3, 2017 order of the juvenile court made pursuant to Welfare and Institutions Code section 300, subdivisions (a), (b), and (j), detaining his 12-year-old son, F.G., and 11-year-old daughter, K.G., from him and placing them with their mother, S.G. (Mother).¹ Father contends that the juvenile court should have dismissed the petition based on insufficient evidence.

Father and Mother have a lengthy history with the Los Angeles County Department of Children and Family Services (DCFS). Father alleges that each previous allegation against him has been unsubstantiated, and that “[g]iven the long history of false and unsubstantiated allegations of serious physical abuse made against [F]ather, the lack of any corroborating physical evidence from the latest claim, and the circumstances under which the allegations were made in this case, it was not reasonable for the juvenile court to assert jurisdiction over these children and order them placed” with Mother. He argues that the jurisdictional and dispositional findings made by the juvenile court are not supported by sufficient evidence.

We conclude that sufficient evidence supported the juvenile court’s decision to assert jurisdiction over F.G. and K.G. under section 300. Accordingly, we affirm.

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

FACTUAL AND PROCEDURAL BACKGROUND

At 8:25 p.m. on Saturday, May 20, 2017, Officer Funes of the Newton Division of the Los Angeles Police Department (LAPD) and her partner, Officer Burgos, responded to Long Beach Memorial Hospital to conduct an investigation of alleged physical abuse of F.G., then 11 years old. F.G. visited Mother that day and complained of pain to his right rib area, which led Mother to take him to the hospital. The hospital social worker, Carol Lerma, contacted DCFS and the police.

Officer Burgos interviewed F.G. and K.G. at the hospital. F.G. reported that on May 16, 2017, at approximately 6:00 a.m., he was at home sleeping in the same room as K.G. Father entered the room to wake them up for school. Upon waking, F.G. realized there was a dark spot on the bed, and Father asked him if he had wet the bed. F.G. replied yes, after which Father struck him once with a closed fist in the right rib area. Father then told F.G. to shower and get ready for school. F.G. told the officers that the blow did not leave a visible mark but that it hurt. F.G. described being disciplined approximately two times a week for “the past few weeks,” and stated that when he is disciplined, Father either strikes him once with an open hand or a closed fist. Next, Officer Burgos interviewed K.G., then 10 years old. K.G. told the officer that previously in the week, early in the morning, she was at home sleeping in the same room as F.G. when Father entered the room to wake them for school. When she was interviewed by the Children’s Social Worker (CSW), K.G. stated that she witnessed Father striking F.G. in the ribs, and that she was afraid to return to Father’s home.

F.G. was medically assessed at the hospital and had chest x-rays, which revealed no injuries. F.G. and K.G. were detained and were later released to Mother.

The CSW conducted a telephonic interview with Father on May 21, 2017. Father stated that he spanked F.G. on the bottom with an open hand for stealing Father's money. He denied hitting F.G. in the chest with an open hand. Father informed the CSW that allegations had been made against him in prior years, but that in each case, the children were returned to him.

The CSW interviewed F.G. on May 21, 2017 at the Newton Division of the LAPD. F.G. stated Father became upset when he wet the bed four days earlier and "socked" him on the right side of his ribs. F.G. admitted having taken Father's money and using it to buy things for a classmate, but said that Father did not hit him for that reason. Instead, Father took F.G. to the police station to speak with a police officer, who told him not to steal; F.G. said that he was going to pay back Father. F.G. also said that previously, Father had hit him all over his body with a closed and open hand. F.G. stated he was afraid of Father and did not want to return to Father's home. The CSW did not observe any bruises or marks on F.G.

On the same day, the CSW interviewed K.G., who stated that Father has hit her with an open hand and closed fist on her bottom. The CSW also interviewed Mother, who reported that she had unmonitored visits with F.G. and K.G. on Saturdays from 12:00 p.m. until 7:00 p.m., with the exchanges taking place at the Newton Division police station. Mother asserted that Father told her that F.G. had stolen money from him and that he took F.G. to the police station. Father did not inform Mother that he spanked F.G. Mother told the CSW that F.G. called her

during the week and told her that Father punched him in the rib. When Mother picked F.G. and K.G. up days later, on Saturday, May 20, F.G. was still complaining of pain in his side so she took him to the hospital. Mother stated that for the prior year, the children had not complained of abuse by Father. Mother was then receiving counseling, had been sober for three years, and indicated her willingness to take a drug test on May 23, 2017.

A. Prior DCFS History

Father describes a history with the family and DCFS that dates back to 2008. Mother was the subject of the first referral regarding F.G. and K.G. in June 2008. The referring caller alleged that Mother's then-boyfriend threatened Mother with a knife in the presence of the children, and alleged continuing domestic violence in the home. The allegation against Mother was determined to be unfounded, but the allegation against Mother's boyfriend was sustained. Mother obtained a restraining order against her boyfriend, and the investigation was closed with no services provided.

The first referral to DCFS with allegations against Father occurred on October 2, 2008, when the children were two and three years old. The referring caller alleged that F.G. and K.G. were left unsupervised when they were with Father, and that Mother had obtained a domestic violence restraining order against Father for violence occurring in the presence of the children. The allegations were determined to be unfounded, no safety threats were identified, the family was referred to family court regarding child custody issues, and the investigation was closed.

In December 2008, a referring caller alleged that Father and a paternal uncle chased Mother's car and shot at her. The

caller alleged that Father made false accusations against Mother, leading to her arrest, and the children being released to Father. Allegations of general neglect by Mother and Father were substantiated, and allegations of emotional abuse were determined to be inconclusive. During this investigation, DCFS determined that the allegation that Mother was shot at was false. Mother was subsequently arrested for throwing acid at Father's girlfriend. The children were placed with Father, where they received family maintenance services, and Mother received reunification services. Mother completed services and the case was closed.

In October 2009, a referring caller reported that Father was failing to meet the children's needs, K.G. had bruises on her face, and F.G. had a rash and tooth decay. The caller also reported that the children's paternal uncle had been arrested for possession of a loaded firearm and that Father was an alcoholic. Each allegation was determined to be unfounded, and the investigation was closed.

In December 2010, a referring caller reported that Father's girlfriend punished F.G. by putting his head in a toilet. This allegation was determined to be unfounded and the case was closed.

In October 2011, a caller reported that the children were acting out sexually and kissing each other. Again, the allegation was determined to be unfounded and the case was closed.

In December 2012, a referring caller alleged domestic violence between Father and his girlfriend, and Father was alleged to have engaged in emotional abuse, general neglect, and physical abuse of the children. The allegations of emotional and

physical abuse were unfounded, and the allegation of general neglect was inconclusive.

In June 2013, a reporting caller alleged that F.G. stated he wanted to take his life, and asserted that he needed services. These allegations were inconclusive, but ongoing issues between Mother and Father were identified, and F.G. was provided with mental health services. The investigation was closed.

In December 2013, a referring caller reported that Father “is a very dangerous, ex-gang member, who shot [M]other 3 years ago in front of” F.G. The caller also alleged that F.G. fought with other students and was withdrawn and isolated. The caller described Mother and Father as separated, and alleged that Mother had a restraining order against Father, but that Father was violating the order. The allegations of general neglect by Father were substantiated, but the allegations of emotional abuse were inconclusive. After a January 29, 2014 detention hearing, the juvenile court released the children back to their parents.

In March 2014, a referring caller alleged general neglect against Mother. Mother had given birth to a baby girl at home; thereafter, an ambulance transported them to a hospital. The caller alleged that Mother did not receive prenatal care until her second trimester, and mother was not given a toxicology screen because the baby, T.G., was born at home. The caller further alleged that the baby was given a toxicology screen at the hospital and tested positive for methamphetamine. Allegations of general neglect of F.G., K.G, and Mother’s other two children, A.S. and T.G., were substantiated. F.G. and K.G. were detained from Mother and released to Father.

In August 2014, a referring caller alleged general neglect and physical abuse by Father and his girlfriend, Alma, including allegations that Alma twice pulled on F.G.'s ear, resulting in injuries under his ear. The caller articulated a suspicion that F.G. is autistic based on behaviors like rocking back and forth, and that F.G. wets the bed regularly. The caller stated that Father and Alma "make [F.G.] go to the laundry room and wash his clothing when he urinates on his bed." The allegations were deemed inconclusive, the situation was "stabilized," and the referral was closed.

On November 2, 2016, a new referral alleged that Father physically abused F.G. and K.G. The social worker "assessed for all forms of abuse and neglect and after full investigation concluded that the allegations of [p]hysical [a]buse [were] unfounded." (Capitalization omitted.) The referral was closed. On November 18, 2016, Mother appealed the dismissal of the petition. Because Mother lacked standing to appeal the dismissal, we dismissed her appeal in an opinion filed on December 13, 2017.

B. Current Petition

The petition to which the instant appeal relates was filed on May 24, 2017. The petition alleges, pursuant to section 300, subdivision (a), that on or about May 18, 2017, Father physically abused F.G. by striking him with Father's fists, causing F.G. pain. The petition further states that on prior occasions, Father struck F.G.'s body with fists and open hands, and that F.G. "is afraid of the father and does not wish to return to the father's home and care due to the father's physical abuse." On prior occasions, Father is alleged to have physically abused K.G. by striking her with fists and open hands, and throwing a shoe at

her on one occasion. Like F.G., K.G. stated that she did not wish to return to Father's home. The petition also states that Father failed to supervise or protect F.G. and K.G., and alleges abuse of a sibling pursuant to section 300, subdivision (j).

The juvenile court conducted a detention hearing on May 24, 2017. F.G. and K.G. were detained from Father and placed with Mother, who was ordered to undergo drug testing. Father was granted monitored visitation, three times per week. The court ordered counseling for both children.

Dependency Investigator Batiste (DI) interviewed F.G. alone on June 6, 2017. F.G. told the DI that his "father socked me in my ribs because I peed in my bed and I couldn't breathe." F.G. said he experienced pain from the injury for several days, and that he cried and had a bruise on his right side that went away. F.G. told the DI that Father usually disciplined him by hitting him all over his body with a closed and open hand. When the DI asked F.G. whether he had taken Father's money without permission, F.G. admitted taking the money, but stated, "I didn't get in trouble for that, I got in trouble for peeing on myself." F.G. also told the DI that Father "socks [K.G.] if she doesn't do whatever he ask[s] her to do or if she breaks something."

The DI interviewed K.G., alone, the same day. K.G. stated that Father punched F.G. in the ribs because he peed in the bed, and that Father "always hit[s] us all over our body with a closed and open hand for no reason." K.G. "became very emotional" during the interview when discussing Father. Both children indicated that they would rather live with their mother "because she doesn't hit them" and that they "are afraid of their father." The DI met with Mother as well. Mother stated that when she

saw F.G. for visitation, he complained about the right side of his chest so she took him to the hospital to be evaluated.

The DI attempted to interview Father on June 6, 2017.

Father “stated that he [did] not want to participate in an interview because he is ‘really busy and doesn’t have time.’”

Father blames DCFS and is “tired of going through this bull shit, 9 years; I have been going through this.”

In addition to F.G. and K.G., the CSW interviewed seven-year-old I.G. and four-year-old R.G., Father’s children with Alma, who are half-brothers to F.G. and K.G., and a two-year-old child of Alma’s, I.S. R.G. told the CSW that F.G. stole Father’s money and gave it to his friends and that F.G. “got a spanking on his butt and that . . . [F]ather also hit him in his head with a closed hand.” R.G. stated that he was scared of Father when he was yelling at F.G. but “not too scared where he did not want to stay with his father.” I.G. told the CSW that he did see Father yell at F.G. but did not see him hit or spank him.

On August 3, 2017, the juvenile court conducted a hearing, for which it admitted into evidence the May 24, 2017 detention report, a June 26, 2017 jurisdiction/disposition report, and an August 3, 2017 last minute information report. After the hearing, the juvenile court sustained the petition and declared F.G. and K.G. to be dependents of the court pursuant to section 300, subdivisions (a), (b), and (j). The court ordered the children placed with Mother, under DCFS supervision. The court ordered DCFS to provide family maintenance services with respect to Mother and family reunification services with respect to Father, individual counseling and anger management for Father and conjoint counseling for Father and the children, and conjoint counseling for Mother and the children along with drug and

alcohol services and random or on-demand drug and alcohol testing. The court ordered Father to provide the social worker with K.G.'s glasses and the children's immunization records to deliver to Mother.

This appeal followed. On January 3, 2018, we granted the DCFS's request to augment the record with the August 3, 2017 "last minute information" for the court, Father's court-ordered case plan, and Mother's court-ordered case plan.

DISCUSSION

Section 300, subdivision (a) provides that a child is within the jurisdiction of the juvenile court if the 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 or guardian." Subdivision (b)(1) provides for 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, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse." Subdivision (j) provides for juvenile court jurisdiction if the child's sibling has been abused or neglected and there is a substantial risk that the child will be abused or neglected.

Father contends the superior court erred by concluding that F.G. and K.G. were harmed and are at risk of harm such that they fall within these provisions of section 300. He alleges that this case is “a custody dispute masquerading as a juvenile dependency case,” and that given prior unfounded allegations against Father, it was not reasonable for the juvenile court to have made true findings regarding the allegations in this case. Father alleges that Mother manipulated the children, DCFS, and the juvenile court in order to wrest custody of the children from Father.

We review jurisdictional findings “for substantial evidence and will affirm if ‘there is reasonable, credible evidence of solid value to support them. [Citations.]’ ” (*In re Jonathan B.* (2015) 235 Cal.App.4th 115, 119.) “ ‘In reviewing a challenge to the sufficiency of the evidence supporting the 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.” [Citation] “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.]” [Citation.]’ [Citation.]” (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

Father acknowledges that issues of fact and credibility are within the province of the juvenile court. He argues, nonetheless, that the substantial evidence test “does not give a free pass to the juvenile court to make any rulings it sees fit.” Father’s argument is grounded in the history of allegations prior to 2017 that were unsubstantiated. He asserts that the claims were unsupported by physical evidence and that the children make allegations when they are in Mother’s care.

Father also contends the record before the juvenile court does not disclose evidence that Father harmed the children or that they are at risk of harm within the reach of section 300. He alleges that the children may have been coached, because the language used by F.G. “appears to have been supplied to him by an adult.”

We observe that in making its ruling, the juvenile court had statements made by F.G. and K.G., as well as four-year-old R.G.’s corroborating statement. Father urges this Court to conclude that it was unreasonable for the juvenile court to have relied on R.G.’s statement, because Father contends there are “no indications the social worker went through any preliminary inquiries with [R.G.] about the difference between something that is true and something that is not,” and the social worker “apparently did not ask any follow-up or clarifying questions.” Father also cites interviews with others, including seven-year-old I.G. and a maternal aunt, who reported being around the family often and did not see any physical abuse.

We do not make such credibility determinations. “ ‘ “To warrant the rejection of the statements given by a witness who has been believed by a trial court, there must exist either a physical impossibility that they are true, or their falsity must be

apparent without resorting to inferences or deductions. [Citations.] Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citations.]” ’ That appellate courts rarely reject evidence the trial court found credible is ‘understandable when we see that for rejection it is required that the testimony be “wholly unacceptable to reasonable minds” [citation]; “unbelievable *per se*” [citation] such that “no reasonable person could believe the testimony” [citation].’ [Citation.]” (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1149.) No such physical impossibility or similar reason to reject the statements of F.G., K.G., and R.G. is presented in this case. Inconsistencies and conflicts in the evidence “go to credibility of witnesses and weight of the evidence, which are matters for the trial court.” (*Ibid.*)

Father’s contention that the family’s prior history with DCFS undermines the juvenile court’s order does not persuade us otherwise. The prior history also includes an allegation against Father that was sustained, as well as multiple allegations that were determined to be inconclusive. In sum, the current allegations, even viewed through the lens of prior history, are supported by sufficient evidence. Accordingly, we affirm.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

BENDIX, J.*

We concur:

ROTHSCHILD, P.J.

CHANEY, J.

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