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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re MICHAEL D., a Person Coming Under the Juvenile Court Law.	B235697 (Los Angeles County Super. Ct. No. CK88508)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. JOSE D., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Robert Stevenson, Juvenile Court Referee. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Ordin, County Counsel, James M. Owens, Assistant County Counsel, Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

Appellant Jose D. is the father of 11-year-old Michael D. Appellant was arrested for repeatedly sodomizing a 13-year-old member of a soccer team that appellant coached, and he is believed to have molested other boys on the team. Appellant challenges the juvenile court's jurisdiction over Michael, which is based on appellant's predilection for molesting young boys. We affirm the judgment. Substantial evidence supports the finding that appellant poses a substantial risk of harm to Michael.

FACTS

In June 2011, the Department of Children and Family Services (DCFS) was alerted that appellant sexually abused an unnamed 13-year-old boy (Doe). Appellant reportedly took Doe into his bedroom, locked the door, plied him with beer and Red Bull, and fondled Doe's penis to stimulate ejaculation. The abuse began in mid-2010, and occurred "on many occasions." Appellant showed Doe pornographic movies. In February 2011, appellant began having anal sex with Doe, which occurred seven to 10 times before Doe reported the abuse to his family in mid-2011.

Appellant was arrested for committing lewd and lascivious acts with a child under the age of 14. When questioned, appellant smirked and said, "You can speak with my lawyer." A police investigation indicated that appellant sexually abused several boys. His son Michael (born in October 2000) was detained by DCFS.

Michael knows that appellant was arrested for sexually abusing young boys, but he denied that appellant abuses him. Appellant has coached Michael's soccer team for five or six years. Michael acknowledged that appellant brought home different members of the soccer team, locked himself in a bedroom with the boys, and spent a long time alone with them. Michael described appellant's conduct of inviting boys into his locked bedroom for long periods as "kind of weird."

Appellant's misconduct took place when Michael's mother (Mother) was at her job. Mother was unaware of any abuse, was shocked to learn of the allegations, and does not want appellant to return to the family home if he is responsible for the crimes. The family lives in a two-bedroom apartment. One bedroom is inhabited by appellant, Michael, and Mother; the second bedroom is occupied by a paternal great aunt; and the

paternal grandmother sleeps on a cot in the living room. DCFS categorized Michael as being at "very high" risk of future abuse.

DCFS filed a dependency petition on behalf of Michael. It alleges that appellant sexually abused an unrelated child by repeatedly forcibly sodomizing him, fondling him, and showing him pornographic videos, resulting in appellant's arrest. The abuse of Doe endangers Michael's physical health and safety and places him at risk of sexual abuse. The petition alleges jurisdiction on the grounds of failure to protect; sexual abuse; and sibling abuse. There were no allegations against Mother.

The court found a prima facie case for detaining Michael. Appellant was incarcerated, and Michael was released to Mother's custody. Appellant was prohibited from visiting the family home or Michael's school. Appellant was declared to be Michael's presumed father. He denied the allegations in the petition. The court authorized Michael to visit appellant in jail, and appellant may write letters to Michael.

DCFS submitted a report for the jurisdiction hearing. In a forensic interview, Michael reiterated that no one touched him inappropriately. He has a good relationship with appellant and misses him. Michael reported that three children went into appellant's bedroom and locked the door. During these visits, according to Michael, "My dad would tell me to stay outside playing." He thought it was "a little bit wrong" that appellant and the boys would lock themselves in the bedroom. The children who visited appellant's bedroom did not say anything about sexual abuse. Michael did not tell Mother that appellant took children from the soccer team into his bedroom while she was at work. Mother was surprised when appellant was arrested. Michael seems to be thriving in Mother's care, and she is protective of him. Because appellant is incarcerated, and Mother is willing to protect Michael, DCFS recommended that Michael remain with Mother, and that dependency jurisdiction be terminated with a family law order in place giving Mother sole physical custody of Michael.

The jurisdiction hearing was conducted on August 24, 2011. Appellant asked the court to strike the petition for lack of evidence that Michael was sexually abused, arguing that Michael faces no substantial risk of harm because appellant is not predisposed to

molest his own child. The court sustained a count of failure to protect and a count of sexual abuse. It reasoned that appellant brought children home, locked the bedroom door, showed pornographic videos, and molested Doe, all with Michael "sitting right outside the room when this is going on," knowing that his father was alone with his teammates. The court declared Michael to be a dependent of the court and placed him in Mother's custody. If released from jail, appellant is authorized to have monitored visits with Michael. Michael can visit appellant once every two weeks in jail.

DISCUSSION

The court's disposition order constitutes an appealable judgment. (Welf. & Inst. Code, § 395; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 196.) "In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] 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; *In re J.N.* (2010) 181 Cal.App.4th 1010, 1022.)

Appellant objects to the court's sustained findings under Welfare and Institutions Code section 300, subdivisions (b) and (d).[1] He does not dispute the allegations that he sexually abused Michael's soccer teammates. The issue is whether appellant's sexual misconduct poses a substantial risk of harm to Michael.

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[1] The court may exercise jurisdiction under section 300 if "(b) 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, . . . The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness." Jurisdiction is also proper if "(d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused . . . by his or her parent . . . ." All further statutory references are to the Welfare and Institutions Code.

Appellant contends that his unlawful abuse of unrelated children is not a sufficient basis for sustaining dependency jurisdiction. Appellant states, "With respect to the minor in this case, there is no indication that he is at risk of sexual abuse. J.D. only had sexual relations with unrelated children." It is not dispositive that appellant abused other children, but not Michael. The jurisdictional predicate may be satisfied by showing a substantial risk that a child will suffer serious physical harm or abuse. (*In re Adam D.* (2010) 183 Cal.App.4th 1250, 1261.) This showing "can be met based on evidence of prior acts." (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1438. Accord: *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 ["evidence of past conduct may be probative of current conditions . . ."].) A "substantial physical danger" to a child exists when the child is exposed to an adult with "a proven record" of abuse. (*In re Rocco M.*, at p. 824.)

Evidence of wrongful parental acts against unrelated children is relevant in a dependency proceeding. The statutory scheme states, "Proof that either parent . . . who has the care or custody of a minor who is the subject of a petition filed under Section 300 has physically abused, neglected, or cruelly treated *another minor* shall be admissible in evidence." (§ 355.1, subd. (b), italics added.) Under section 355.1, evidence that appellant abused Doe may be used to show that Michael is at risk of harm.

In *In re Y.G.* (2009) 175 Cal.App.4th 109, a mother was arrested and charged with child endangerment for hitting an unrelated 18-month-old girl in the face, causing swelling and bruising. While the mother was *not* accused of harming her own two-year-old daughter, Y.G., the dependency court exercised jurisdiction because the misconduct demonstrated that Y.G. was at substantial risk of harm. (*Id.* at pp. 111-114.) The mother challenged dependency jurisdiction. She did not deny hitting the unrelated child, but argued that Y.G. was unharmed. Citing section 355.1, the court rejected the mother's argument: "[C]ontrary to Mother's contention, the Legislature has expressly provided that evidence of a parent's misconduct with another child is admissible at a hearing on the section 300 petition. . . . This provision is consistent with the principle that a parent's past conduct may be probative of current conditions if there is reason to believe that the conduct will continue. [Citation.] Depending on the circumstances, a parent's abuse of

an unrelated child may well tend to prove that the parent suffers from characteristics that also place the parent's child at substantial risk of similar abuse as a result of the parent's inability to adequately supervise or protect." (*In re Y.G.*, at pp. 115-116.)

The trial court may find danger to a child under section 300, based on parental misconduct with an unrelated child, if the misconduct is proximate in time and involved an unrelated child who is close in age to the minor named in the petition; the court also considers the reasons for the parental misconduct. (*In re Y.G.*, *supra*, 175 Cal.App.4th at p. 116.) Here, appellant's sexual misconduct with an unrelated child occurred shortly before the petition was filed; in fact, it provoked DCFS to file the petition. Michael is close in age to Doe, who was repeatedly molested by appellant over the course of a year. Finally, there is no conceivable justification for appellant's sexual misconduct with a child. As a result, the trial court could exercise its discretion and base its jurisdictional findings on evidence that appellant sexually abused an unrelated child.

Appellant relies primarily on *In re B.T.* (2011) 193 Cal.App.4th 685 for the proposition that parental sex with an unrelated minor does not support dependency jurisdiction. B.T. was conceived during an unlawful sexual relationship between B.T.'s mother and a teenager. (*Id.* at pp. 687-688.) The appellate court refused to assume that "an adult woman who has had a consensual sexual relationship with an unrelated 15-year-old boy will probably sexually abuse her infant daughter." (*Id.* at p. 694.)

In re B.T. is distinguishable. It may be true that a woman who has sex with a teenage boy is unlikely to molest her infant daughter. By contrast, appellant was having sex with boys ages 12 or 13. The age and gender of the abused children correspond to Michael's age and gender. The sexual relations in *In re B.T.* were consensual; here, they were forcible. Moreover, appellant conspicuously committed his crimes in the presence of his son, who saw that appellant entertained young boys for long periods in a locked bedroom, which Michael described as "kind of weird" and "a little bit wrong." Appellant obviously did not care that Michael was being exposed to proof of appellant's depravity.

Michael is at significantly higher risk of harm than the infant in *In re B.T.* The Legislature intended the courts "to focus on the heightened risk facing minors who come

into contact with sex offenders, and to ensure the juvenile court has information about such persons when assessing jurisdictional facts." (*In re John S.* (2001) 88 Cal.App.4th 1140, 1145.) Appellant's aberrant sexual behavior placed Michael at risk of aberrant sexual behavior. (*In re Andy G.* (2010) 183 Cal.App.4th 1405, 1414.) As a soccer coach, appellant was entrusted with the care and supervision of his young victims: appellant breached the trust confided in him, so it is not unreasonable to believe that he would breach Michael's trust in a similar manner.

The courts need not wait for disaster to strike before asserting jurisdiction, in the face of repeated past instances of abuse. If parental violence regularly occurs somewhere in the family household, even if a child does not witness the violence, this constitutes neglect because the child is exposed to a substantial risk of encountering the violence and suffering serious harm from it. (*In re Heather A., supra,* 52 Cal.App.4th at p. 194.) The evidence shows that appellant repeatedly fondled and forcibly sodomized a young boy inside the family home. Indeed, the violence occurred in the bedroom that Michael shares with appellant, while Michael was seated nearby. Even if he did not witness it, there was a risk that Michael could be exposed to violence.

Appellant's challenge to the dispositional order is based on his claim that the court has no jurisdiction over the case. As we have found, the dependency court properly exercised its jurisdiction over Michael. As a result, the disposition order stands. The court's order that Michael participate in counseling is reasonable, given the circumstances of appellant's arrest and incarceration, and Michael's sadness about it.

DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

DOI TODD, J. ASHMANN-GERST, J.