Filed 8/16/18 In re J.G. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re J.G., a Person Coming Under the Juvenile Court Law.	B285326 (Los Angeles County Super. Ct. No. DK12357)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. C.G., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Honorable S. Emma Castro, Juvenile Court Referee. Affirmed.

Elizabeth C. Alexander, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Rebecca Harkness Deputy County Counsel, and Jessica S. Mitchell, Deputy County Counsel for Plaintiff and Respondent.

* * * * * *

Based on prior domestic violence between a mother and father, the juvenile court exerted dependency jurisdiction over a newborn child. In this appeal, mother argues that substantial evidence does not support the court's assertion of jurisdiction. We reject this argument, and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

By 2015, C.G. (mother) had two children by two different men—K.G. (born July 2011) and L.G. (born April 2015). Daulton N. (father) is L.G.'s biological father.

In July 2015, father punched mother and pushed her into a bookshelf while she had L.G. (then an infant) in her arms. At that time, mother remarked that this was the "30th time" father had hit her, although mother had only reported two of those prior incidents to the authorities. Within days thereafter, the Los Angeles County Department of Children and Family Services (the Department) filed a petition asking the juvenile court to exert dependency jurisdiction over K.G. and L.G., and the court did so. A criminal court also issued a protective order to keep father away from mother. In April 2016, the juvenile court awarded mother sole physical and legal custody of K.G. and L.G., and terminated its jurisdiction.

Despite the criminal protective order, mother moved back in with father immediately after the juvenile court terminated its jurisdiction. In August 2016, while mother was six months pregnant, mother and father had another incident: Mother

screamed and yelled at father and grabbed him by the neck, and father and mother also spit on one another. Both K.G. and L.G. were present. Mother thereafter told a social worker that father "has a history of punching and pushing her." The Department filed a petition with the juvenile court, again asking it to exert dependency jurisdiction over K.G. and L.G.; the court did so.

J.G. was born in November 2016. Father is his biological father.[1]

The Department filed a petition asking the juvenile court to exert dependency jurisdiction over J.G. The Department alleged that mother and father have a "history of engaging in violent altercations in the . . . presence" of K.G. and L.G.; that mother and father spat on each other in August 2016, in front of those children; and that father had "struck . . . mother" on prior occasions. The Department alleged that this conduct placed J.G. at "substantial risk" of "suffer[ing] . . . physical harm inflicted nonaccidentally" (making jurisdiction appropriate under Welfare and Institutions Code section 300, subdivision (a));[2] placed J.G. at "substantial risk" of "suffer[ing] . . . physical harm . . . as a result of the failure or inability of [mother and father] . . . to . . . protect the child adequately" (making jurisdiction appropriate under section 300, subdivision (b)); and placed J.G. at "substantial risk" of "abuse[] or neglect[]" due to the abuse or neglect of his older

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1 Mother initially refused to say who was J.G.'s father, then said it was another man. DNA tests established it was father.

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

siblings, K.G. and L.G. (making jurisdiction appropriate under section 300, subdivision (j)).

In January 2017, the juvenile court exerted dependency jurisdiction over J.G. on all three grounds alleged in the Department's petition.

Father was released from jail around that time and, despite the protective order, resumed his relationship with mother. In February 2017, father "butt dialed" the Department's assigned social worker, and her voicemail recorded a heated exchange between father and mother: Mother called father "fuckin' crazy," and father called mother "a backstabbing, fucking heartless ass person," a "fuckin' sociopath," and a "fuckin' bitch." In March 2017, father kicked down the door of the house where mother was living and brandished a screwdriver. In April 2017, father drove mother to several Department-monitored visitation sessions. And in May 2017, mother, father, and a second man were caught on video taking items from a storage locker.

In May 2017, the juvenile court held the disposition hearing and ordered that J.G. be removed from mother after finding her to be a "dishonest, deceptive parent" who "continues to be engaged in a relation" with father and who accordingly posed a "substantial danger" to J.G.

Mother filed this timely appeal.

DISCUSSION

Mother argues that the juvenile court erred in exerting jurisdiction pursuant to section 300, subdivision (a). Although the Department has filed a letter in which it "does not object to the Court dismissing" this particular count, we decline to abdicate our duty to evaluate mother's arguments. What is more,

and as explained below, we reject mother's arguments for two reasons.

First, mother's appeal is improper because it challenges only one of three independent grounds upon which the dependency jurisdiction in this case rests. (*D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1127.) Mother urges that we should still entertain her challenge to the juvenile court's section 300, subdivision (a) finding because (1) this finding (but, implicitly, not the findings under subdivisions (b) and (j)) will require her to be included in the Child Abuse Central Index (Pen. Code, § 11170), and (2) appellate courts have the discretion to entertain a jurisdictional challenge to a particular finding, even though it would not upset the ultimate assertion of jurisdiction, if that finding could have consequences beyond the jurisdiction in this case such as inclusion in the child abuse database (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763). The first premise of mother's argument is incorrect. The Child Abuse Central Index is meant to include conduct constituting "child abuse" or "severe neglect" as those terms are defined by the Child Abuse and Neglect Reporting Act. (Pen. Code, §§ 11165.2, 11165.6.) Those definitions include conduct that falls under *both* subdivision (a) *and* subdivision (b) of section 300; consequently, mother has not shown how a decision by this Court overturning the juvenile court's section 300, subdivision (a) finding while leaving the subdivision (b) finding intact would affect her potential to be included in the Child Abuse Central Index (and thus how it will have a consequence beyond jurisdiction in this case).

Second, mother's challenge to the juvenile court's jurisdictional finding under section 300, subdivision (a) fails on

its merits. That subdivision empowers a juvenile court to exert dependency jurisdiction when a "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).) Exposing a child to domestic violence between his parents is sufficient to trigger jurisdiction under this section if (1) the violence places the child in harm's way, and (2) "there is evidence that the violence is ongoing or likely to continue." (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598-599 (*Giovanni F.*); *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717; *In re Jonathan B.* (2015) 235 Cal.App.4th 115, 120-121.) This provision does not require that the parents direct their violence at the child (*In re M.M.* (2015) 240 Cal.App.4th 703, 719-720) because the "[d]omestic violence [itself] is nonaccidental" (*Giovanni F.*, at p. 600).

A juvenile court's jurisdictional finding is valid if it is supported by substantial evidence. Our task on appeal is a narrow one: We ask only whether there is substantial evidence to support that finding, and do so viewing the evidence in the light most favorable to the juvenile court's finding and drawing all inferences in favor of that finding. (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1161-1162.)

Substantial evidence supports the juvenile court's finding that J.G. was at "substantial risk" of suffering "serious physical harm inflicted nonaccidentally" by either mother or father. Mother and father have a long history of domestic violence: Father punched and pushed mother in July 2015, and spit in her face after she grabbed his neck in August 2016; what is more, this was just the tip of the iceberg in light of mother's admission that the July 2015 incident was her "30th" incident of domestic

violence with father. While engaging in this domestic violence, mother and father have continued to place mother's children in harm's way: The infant L.G. was in mother's arms when father punched and shoved her in July 2015, and both K.G. and L.G. were present during the August 2016 incident. And the relationship between mother and father is likely to continue. Despite protective orders for her benefit, mother repeatedly continues to interact with father and, if the inadvertently left voicemail is any indication, their interactions continue to be volatile. That mother has only reported a small fraction of the incidents of domestic violence (2 out of 30) indicates that she is also unwilling to seek the intervention of others during the abuse. Taken together, these facts constitute substantial evidence that J.G. is at substantial risk of suffering serious physical injury due to the parents' nonaccidental acts of domestic violence.

Mother levels three attacks at the juvenile court's finding.

First, she argues that section 300, subdivision (a) is applicable only if "there [has been] an injury to [a] child to begin with." Because this argument requires us to interpret the statute, our review is de novo. (*John v. Superior Court* (2016) 63 Cal.4th 91, 95.) Nothing in the plain language of subdivision (a) requires a juvenile court to wait until a child has been physically injured before stepping in. To be sure, the statute states that, "[f]or purposes of this subdivision, a court *may* find there is a substantial risk of serious future injury based on [(1)] the manner in which a less serious injury was inflicted, [(2)] a history of repeated inflictions of injuries on the child or the child's siblings, or [(3)] a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious

physical harm." (§ 300, subd. (a), italics added.) By its plain language, this is a list of possible ways to establish risk; it does not purport to be exhaustive. Not surprisingly, courts have repeatedly and consistently rejected the notion that section 300, subdivision (a) only applies if a child was previously harmed. (*Giovanni F.*, *supra*, 184 Cal.App.4th at p. 598; *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383 ["the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child"]; *In re Yolanda L.* (2017) 7 Cal.App.5th 987, 993 [same].) This makes sense because a contrary construction of subdivision (a) would give a parent an automatic "pass" for a child's first injury, a result wholly at odds with our Legislature's stated purpose for the dependency laws—namely, "to provide maximum safety and protection for children." (§ 300.2.)

Second, mother contends that the juvenile court cannot rely on the August 2016 incident to find risk because (1) J.G. was still in utero at the time, and an unborn fetus is not a "child" within the meaning (and thus under the protection) of the dependency law (*In re Steven S.* (1981) 126 Cal.App.3d 23, 28-30), and (2) all mother and father did was spit on each other. This contention overlooks that the juvenile court relied on the presence of J.G.'s two older siblings (or half siblings) during the August 2016 incident—not J.G.'s in utero presence. It also ignores that the 30-plus incidents prior to the August 2016 incident, and that mother's and father's 2017 conduct, independently provide substantial evidence that J.G. continues to be at risk due to mother's and father's conduct.

Lastly, mother points out that placing a child in harm's way can also provide a basis for jurisdiction under subdivision (b)

of section 300 (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193-194), and from this argues that exposing a child to domestic violence is more appropriately considered as "neglect" under subdivision (b) rather than "abuse" subdivision (a). As we have explained above, the law is to the contrary.

DISPOSITION

The orders are affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, P. J.
LUI

_____, J.
ASHMANN-GERST