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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re MELVIN P., JR., a Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

EMMA M. et al.,

Defendants and Appellants.

B238410

(Los Angeles County
Super. Ct. No. CK90386)

APPEAL from an order of the Superior Court of Los Angeles County,
Donna Levin, Juvenile Court Referee. Affirmed.

Kimberly A. Knill, under appointment by the Court of Appeal, for Defendant and
Appellant Mother.

William Hook, under appointment by the Court of Appeal, for Defendant and
Appellant Father.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and
Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Mother Emma M. and father Melvin P. appeal from the order of the juvenile court sustaining a petition and finding their son two-year-old Melvin P., Jr., was described by Welfare and Institutions Code section 300, subdivision (b).¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Department of Children and Family Services (the Department) removed the child from his parents and filed a section 300 petition. As sustained, the petition read in part, “b-1 [¶] The child Melvin [P.]’s mother, Emma [M.] and father, Melvin [P.], Sr., have a history of engaging in violent altercations in the presence of the child. On [October 12, 2011, the mother and father] engaged in an altercation where the police were called. On [September 2, 2011], the father struck the mother. The mother failed to protect the child in that the mother allowed the father to have frequent contact with the child and to have unlimited access to the child. . . .”

The record shows the Department received a domestic violence referral. The investigating social worker went to the apartment of the person who made the report, a neighbor. The child was at the reporter’s house, along with an adult friend. The two adults told the social worker that mother and father had argued the previous night, October 12, 2011, and the police had intervened. The police arranged for the child to stay overnight with the reporter. According to the reporters, father threw a large television into the hallway as he left.

Asked about the referral, mother claimed she argued with father on October 12 because he smoked marijuana in her house, which she does not allow because of the child. Father defied mother’s rules. Father told the social worker that the argument that night was about mother’s drinking. He found her drunk and they began to argue.

Mother stated that although she and father argued, he did not hit her or become physically violent with her on October 12. She did show the social worker the broken glass from the television father had thrown. She stated father took money from her and

¹ All further statutory references are to the Welfare and Institutions Code.

stole her EBT card from her purse.² Father denied hitting mother and explained they only argued while the child was upstairs with the neighbors.

Mother described another incident of domestic violence between her and father that occurred on September 2, 2011. Mother called the police because father had hit her and took money from her. The police report for the September 2, 2011 incident reveals that father punched mother once on the back of her head and once towards her back. After the second hit, the police report reads, “[i]n fear for her safety [mother] stated she grabbed her child and immediately ran out of the above location.”

On October 17, 2011, mother obtained a temporary restraining order against father. On her application, mother described the October 12, 2011 and September 2, 2011 incidents, as well as a July 2011 incident in which father yelled and cursed at her and threatened to hit her. She told a social worker that during each incident, she called the police on father. Mother also suggested that father was on probation for an incidence of domestic violence with his ex-girlfriend. Despite applying for the temporary restraining order, mother did not seek to make it permanent.

The police had a record of two incidents of domestic violence involving father and another woman, as mother had indicated. Father also has a long criminal record. Among other things, he was charged with battery on a spouse in 2008, but pled to another charge and was required to register as a controlled-substance offender. Mother also has a criminal record. Mother explained the reason she did not end her relationship with father was that the paternal grandmother threatened to call the Department and accuse mother of beating the child.

Father admitted going to court over an incident in which he hit a woman, but he denied the September 2, 2011 incident involving mother.

The Department conducted an assessment to determine the potential for future risk to the child’s safety. It found, despite having completed an anger-management program,

² EBT is the acronym for the electronic benefit transfer card issued to recipients of the Supplemental Nutrition Assistance Program.

that father still could not cope with or contain his anger. The Department categorized the family as being “at ‘High Risk’ for future abuse.”

At the adjudication hearing, mother denied father hit her on September 2, 2011, despite the fact she told the police that he had. She insisted she lied to the police. She also denied stating she grabbed her child and ran after her argument with father, and denied that the child was present during this argument. She denied father threw a television set. Father denied hitting or threatening mother in September or October 2011.

The juvenile court sustained the petition as amended and quoted above. After the disposition hearing, the parents separately appealed.

CONTENTIONS

Mother, joined by father, contends there is insufficient evidence to support the order sustaining the petition.

DISCUSSION

At a jurisdictional hearing, “ ‘proof by a preponderance of evidence, legally admissible in the trial of civil cases must be adduced to support a finding that the minor is a person described by Section 300.’ (§ 355.)” (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 198.) “[T]he purpose of the provisions of this chapter relating to dependent children is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm. . . .” (§ 300.2.)

The circumstances under which the juvenile court may take jurisdiction of a child are narrowly defined. Subdivision (b) of section 300 authorizes dependency jurisdiction 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 . . . to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent . . . to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left”

There are three elements to the definition under section 300, subdivision (b): “ ‘(1) neglectful conduct by the parent in one of the specified forms [in subdivision (b), such as a parent’s failure to adequately supervise or protect a minor]; (2) causation; and (3) “serious physical harm or illness” to the minor, or a “substantial risk” of such harm or illness.’ [Citation.]” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.)

“ ‘ “The petitioner in a dependency proceeding must prove by a preponderance of the evidence that the child . . . comes under the juvenile court’s jurisdiction.” ’ [Citation.] On appeal from an order making jurisdictional findings, we must uphold the court’s findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings. [Citation.] Substantial evidence is evidence that is reasonable, credible, and of solid value. [Citation.]” (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.)

At the core of her appeal is mother’s contention that all the evidence that father hit her was contained in the police report but she testified she had lied to the police. Thus, she argues, the record contains no evidence of “ ‘history of violent altercations.’ ” But, altercations need not amount to physical violence to constitute domestic violence. Thus, throwing a television, screaming at, threatening physical violence, and putting someone in fear for their safety -- all of which is reflected in this record -- constitute domestic violence. More important, it is the province of the trial court, not this court to assess mother’s and father’s credibility generally and with respect to the events here in particular. (*In re Tania S.* (1992) 5 Cal.App.4th 728, 733.) The juvenile court did not believe mother’s denials at the hearing in her attempt to undermine the contents of the police report showing that father hit mother twice in front of the child. We may not reweigh the court’s determination. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) Accordingly, the record contains evidence to support the court’s ruling finding a history of violent domestic altercations and thus, substantial evidence to sustain the domestic violence count under section 300, subdivision (b).

Mother argues there is no evidence that her “conduct (even if neglectful) *caused* any harm” to the child. However, section 300, subdivision (b) authorizes juvenile court jurisdiction if there is “a *substantial risk* that the child *will* suffer, serious physical harm.” (Italics added.) As we have said, “[i]t is clear to this court that domestic violence in the same household where children are living *is* neglect; it is a failure to protect [children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. Such neglect *causes* the risk.” (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 194.)³ Nor does mother challenge the Department’s assessment that the family is “at ‘High Risk’ for future abuse.”

Because a preponderance of the evidence supports the court’s findings as to section 300, subdivision (b) based on count b-1, we need not address the sufficiency of the evidence to support a finding as to the remaining two counts concerning the parents’ substance abuse. “Section 300, subdivisions (a) through (j), establishes several bases for dependency jurisdiction, any one of which is sufficient to establish jurisdiction. (§ 300.)” (*In re Dirk S.* (1993) 14 Cal.App.4th 1037, 1045; see, e.g., *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875.) There being substantial evidence to support the court’s finding as to subdivision (b) based on count b-1, the preponderance of the evidence supports the jurisdictional finding.

³ *In re X.S.* (2010) 190 Cal.App.4th 1154, and *In re J.O.* (2009) 178 Cal.App.4th 139, 144, cited by mother are distinguished. In *In re X.S.*, jurisdiction based on the mother’s altercation with the grandmother was never challenged. (*In re X.S.*, *supra*, at pp. 1156, 1161.) *In re J.O.* involved allegations of failure to provide the child with the necessities of life. These cases contained no analysis about the causal nexus between domestic violence and risk to the child.

DISPOSITION

The order is affirmed.

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ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.