

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re ISAIAH D., et al., Persons Coming
Under the Juvenile Court Law.

B240538

(Los Angeles County
Super. Ct. No. CK63509)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

NANCY D.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Timothy R. Saito, Judge. Affirmed.

M. Elizabeth Handy, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Melinda White-Svec, Deputy County Counsel for Plaintiff and Respondent.

Appellant Nancy D. appeals from the juvenile court order sustaining a dependency petition under subdivisions (b) and (j) of Welfare and Institutions Code, section 300.¹ The court found appellant's three children were persons described by section 300, but did not declare them dependents of the court. Appellant contends there was not substantial evidence to support the court's findings. Respondent Department of Children and Family Services (DCFS) cross-appeals the trial court's dismissal of an allegation under section 300, subdivision (a). We affirm the court's jurisdictional findings.

FACTUAL AND PROCEDURAL SUMMARY

Appellant is the mother of Isaiah D. (born October 2003), E.R. (born March 2006), and B.R. (born July 2008). In April 2006, DCFS substantiated allegations of emotional abuse against appellant, and the children were removed from the home. The case was closed in December 2006. Appellant has an extensive history with DCFS as a minor; she was placed in DCFS custody when a juvenile court found her suicidal and a danger to her siblings.

DCFS received a referral in November 2011 alleging physical abuse of the children by appellant. Isaiah recounted an incident in which appellant became angry with him for urinating in appellant's bed during the night. Appellant told Isaiah to extend his arms, and she hit him repeatedly with a metal-studded belt. Swelling and bruising were observed on his arms. Isaiah stated that he was afraid to go home and did not want to go with appellant. He stated that appellant also hits E.R. with a belt.

Appellant told a law enforcement officer she was struggling to raise three children on her own. Appellant stated that Isaiah had a history of wetting himself and that she had just recently washed her bedding. When she found the bed wet in the morning, she said she just "lost her cool" and admitted hitting Isaiah. Appellant further stated that the incident was not the first time she had physically disciplined her children, but it was the first time she had ever left a mark or bruises.

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

The children were released to mother on December 15, 2012, and remained with her throughout the dependency proceedings.

Appellant told a DCFS social worker that she was frustrated with Isaiah's urinary issue and had sought help from counselors and doctors but nothing had helped. She expressed regret for her actions and reported that she was actively participating in parenting classes and anger management. She expressed how stressful she found her life and her obligations as a single mother without proper support from the fathers of her children. Appellant agreed to participate in therapy with her children and to complete her parenting and anger management classes. DCFS reported that it found appellant was "diligently working on getting all the help she can for her children" and was "dedicated to providing a safe home for her children."

DCFS filed a dependency petition alleging each of the children comes within the jurisdiction of the juvenile court under section 300, subdivisions (a) and (b), and that the two younger children, E.R. and B.R., also come within its jurisdiction under subdivision (j). The petition alleged appellant physically abused Isaiah by repeatedly striking him with a studded belt, inflicting visible injuries. Appellant's excessive abuse endangered Isaiah's physical health and safety, and placed the three children "at risk of physical harm, damage, danger, and physical abuse."

An adjudication hearing was held on February 24, 2012. DCFS submitted their reports. Appellant submitted a series of documents mainly related to the progress she and her children have achieved since the incident. This included a letter from a therapist at the Children's Institute, Inc. The letter indicated that appellant and her children had been dutifully attending their domestic violence group meetings. The therapist stated appellant was "making great efforts to change patterns that have been learned since she was a young child herself." However, the therapist noted that "at times [appellant] appear[ed] overwhelmed due to the lack of support she has from her family and the children's fathers." It was recommended that appellant and her children continue to attend the group in order to avoid continuing the "cycle of violence." Appellant's counsel argued at the hearing that this was a one-time incident and there were no ongoing concerns for the

children's safety. The children's counsel also urged the court to dismiss the petition, arguing this was an isolated incident that did not indicate risk of future harm. Counsel for DCFS argued appellant inflicted serious physical harm on Isaiah and that all three children were at risk of future abuse. He urged the court to sustain the allegations, but to leave the children in the home with appellant so that she could complete the programs in which she was enrolled.

The court found by a preponderance of the evidence that the allegation under section 300, subdivision (a) should be dismissed, but those under subdivisions (b) and (j) should be sustained as amended. The court struck the phrase "physical abuse" from the allegations and replaced it with "inappropriate physical discipline." It based its findings on evidence from medical examinations, police reports and statements from Isaiah and appellant. The court expressed its concern that appellant continued to be frustrated with and overwhelmed by her duties as a single parent. The court pointed to the fact that the two younger children are reaching the same age as Isaiah was when the incident occurred, and, while appellant was working toward improving her conflict resolution skills, there was still a danger that this stress could be manifested inappropriately, possibly resulting in further physical harm to the children. The court declined to take jurisdiction or to declare the children dependents of the court. Instead, it ordered services to be provided to the family and a six-month period of DCFS supervision. (§ 360, subd. (b).) This appeal followed.

DISCUSSION

I

Appellant contends there was no substantial evidence before the court to support the finding that her children were individuals described by section 300. While she admits to inappropriately disciplining Isaiah with a studded belt, she argues there is no evidence of any future risk to the children.

We review a juvenile court's jurisdictional findings for sufficiency of the evidence. (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1140.) We draw all reasonable inferences from the evidence before the court in favor of its finding. (*Ibid.*) "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.” (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.)

In order for a court to find jurisdiction over a child under section 300, subdivisions (b) and (j), there must be sufficient evidence of conduct by the parent causing physical harm or illness to the child or putting the child at future risk of such harm. (See *In re David M.* (2005) 134 Cal.App.4th 822, 828-829.) “[A] single incident of harmful or potentially harmful conduct may be sufficient, in a particular case, to establish current risk depending upon present circumstances.” (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1026.) Appellant argues there was insufficient evidence to support a finding of future risk of harm to the three children.

Appellant points to her cooperation with DCFS throughout the initial investigation and through these proceedings. She argues her documented participation in various programs and the positive reviews by counselors indicate the physical abuse of Isaiah with a studded belt was a one-time occurrence and that there was no current risk to any of the children at the time of the hearing.

However, a court’s finding will be upheld if it is supported by substantial evidence, even if there is substantial evidence to support a contrary finding. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 230.) In stating its finding, the court identified factors it found troubling despite appellant’s diligence. It pointed to evidence of appellant’s continued struggle to overcome the stressors of raising children alone and her feeling of being overwhelmed by the task. The court indicated that it did believe appellant was making progress, but found the circumstances still presented a risk that appellant would be unable to control herself when future stressors presented themselves. The court was concerned that the physical harm inflicted on Isaiah could eventually be turned on his siblings. These fears find inferential support in a statement made by appellant in one of the DCFS reports indicating that she had begun expressing frustration over “potty training” issues with B.R., the same trigger for the inappropriate disciplining of Isaiah. Although the allegations are heavily based on a single incident, the nature and

circumstances surrounding that incident, along with the history of physical discipline, support the court's findings that a current risk of harm existed. (*In re J.N.*, *supra*, 181 Cal.App.4th at p. 1026.)

We find the evidence contained in the DCFS reports, the various letters from counselors and appellant's own statements adequately support the court's findings.

II

DCFS cross-appeals the order of the court dismissing the allegation in the petition under section 300, subdivision (a). It argues the single incident was sufficient to support a finding of jurisdiction under that subdivision.

The same standard of review applies in the court's dismissal of this count. (*In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 230.)

We find the evidence before the court was sufficient to support its conclusion that the allegations under section 300, subdivisions (b) and (j) were proven by a preponderance of the evidence, but finding the record failed to support a finding of jurisdiction under subdivision (a).

DISPOSITION

The jurisdictional findings of the juvenile court are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.