

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 EIGHT

In re R.L., a Person Coming Under the
Juvenile Court Law.

B236242
(Los Angeles County
Super. Ct. No. CK29895)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

Y.R. et al.,

Defendants and Appellants.

Appeal from the orders of the Superior Court of Los Angeles County. Timothy R. Saito, Judge. Affirmed.

Christopher R. Booth and Suzanne Davidson, under appointments by the Court of Appeal, for Defendants and Appellants.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Emery El Habiby, Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

Y.R. (mother) and C.L. (father) appeal from the jurisdictional findings under section 300, subdivisions (b) and (g) of the Welfare and Institutions Code¹ as to their now 16-year-old daughter, R.L. Father also challenges the court's dispositional findings and orders, contending that the Department of Children and Family Services did not meet its burden of clear and convincing proof for R.L.'s removal, informal supervision could have adequately protected R.L., and the court abused its discretion when it ordered only monitored visitation for father. Father contends jurisdiction under subdivision (b) could not be based on his inability to control R.L.'s behavior in the absence of any credible evidence that he abused or neglected R.L. Mother concedes that she did not financially support R.L., but contends that jurisdiction under subdivision (g) was improper because father adequately provided for R.L. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and father have four children together, including R.L., who live with father. Mother was not involved in the children's lives and has four other children with different fathers. R.L. came to the attention of the Department on March 25, 2011, when the Department received a referral from police that R.L. had been reported as a runaway. After R.L. was found, father did not want her returned home because of her out-of-control behavior; she would often run away and father believed she was dating a 20-year-old man. R.L. did not want to go home with father, claiming she ran away because father and her paternal uncle hit her.

A section 300 petition was filed, and R.L. was detained in foster care. The petition was later dismissed without prejudice, when father entered into a voluntary reunification contract with the Department. The contract required father to participate in parenting classes, conjoint counseling with R.L., and visitation with R.L., who was to remain in foster care. However, father did not visit R.L. and he did not participate in services.

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

R.L.'s behavioral problems persisted in foster care. She ran away from her placements several times and continued seeing her 20-year-old boyfriend. Due to father's failure to participate in services and R.L.'s continued behavioral problems, new dependency proceedings were initiated with the filing of a petition on June 17, 2011, which included allegations under section 300, subdivisions (a), (b), and (g) concerning father's physical abuse of R.L., inappropriate discipline and failure to control R.L., and mother's failure to provide support.

The family has a lengthy history with the Department, with 10 referrals between 1996 and 2005, two of which were substantiated and resulted in dependency proceedings. In 1997, a referral for severe neglect was substantiated against mother and father for leaving R.L. and two of her siblings unattended. A physical abuse referral was substantiated against mother in 1999. Mother failed to reunify with R.L.'s half-sibling, Y.M., and her parental rights were terminated. Both parents have extensive criminal histories, including gang activity and drug use.

The Department's detention report revealed that R.L. "was not willing to return to the father's home as father is physically abusive to her." "[F]ather hit her with a belt and extension cord . . . mostly on her buttocks and legs." Paternal uncle, J.L., "also hits her in the same manner." "[H]er father does not intervene, allowing [J.L.] to hit her." R.L. told the social worker "she would get hit 'for stupid reasons[,] such as talking back to paternal grandmother or not responding quick enough to redirections." She was last physically abused on March 22, 2011, when she and a 20-year-old male friend were at a bus stop, and her uncle assaulted her friend and hit R.L. with a baseball bat when she tried to intervene. R.L. denied being in a sexual relationship with the male friend.

Father and paternal uncle denied hitting R.L. The social worker saw that paternal uncle had "a visible left black eye and right scratches to his hand," which the social worker attributed to the bus stop incident. Paternal uncle apparently pressed assault charges against R.L.'s male friend.

During her time in foster care, father did not attempt to visit R.L. and appeared unconcerned when her runaway status was reported by Department social workers. The

Department made a bus pass available to him, which he neglected to use. Father had no money because he was unemployed, and he could not look for work because his green card had expired. Father believed he was facing deportation. Ten people shared his two-bedroom apartment, and his only means of support was from CalWorks grants he received for his sons, along with help from his sister and parents. Neither mother nor father called the Department social worker to get updates on R.L.'s runaway status.

R.L.'s brothers denied father hit any of the children. "He never hits us. My sister kicks, screams, hits . . . she cries wolf. [Father] restrains her only by holding her." One of R.L.'s brothers admitted that "we all have different discipline because of our ages."

The Department's jurisdiction report reflected that father never looked into the costs associated with counseling and parenting classes. When asked why he did not enroll in services, he explained, "I have not had time, and besides I took parenting classes in the past and they don't help. I did not learn anything in those parenting classes. [¶] . . . [R.L.] got us into this problem and she is doing whatever she wants. I don't think she wants to change her behavior. I don't understand why you guys are blaming me. I don't know why you guys are asking me to do things when it's not my fault[.]"

Mother told a Department social worker that "father became the custodial parent for their children and that she never provided the children with the necessities of life, including food, clothing, shelter and medical treatment." "[S]he was 'dealing' with the care of her other children and was involved in drug use, so she had no[] means of support for [her] children [with father]."

At the adjudication hearing, R.L. testified that father disciplined her with his "fist" and "cuss[ed]" at her. She believed he would continue to hit her if she were returned to his custody. R.L. testified she is afraid of her father and that he gets angry easily. R.L. ran away because father hit her, and because of their living conditions. At one time, the family lived in a motel, with 12 family members sharing one room. R.L. continued to run away when placed in a group home because she got into fights with the girls there and did not "feel comfortable." When she lived with her father, R.L. was provided food,

clothing, and medical care. R.L. did not want to return home with father, even if she had her own room.

After considering the evidence, the trial court sustained the following allegations:

“[b-1 . . . under section 300, subdivision (b)] The child [R.L.’s] father . . . is unable to provide the child with appropriate parental care and supervision due to the child’s acting out behavior. The child ran away from the child’s placement on 5-22-11, 5-26-11, 5-27-11 and on 6-2-11. The child is fearful of her father and has a history of running away from home due to the physical discipline she receives while with her father. Remedial services have failed to resolve the family problem. . . . Said inability of father endangers the child’s physical and emotional health and safety and places the child at risk of harm.”

“[g-1 . . . under section 300, subdivision (g)] The child [R.L.’s] mother . . . has failed to consistently provide the child with the necessities of life including food, clothing, shelter and medical care. Such failure to consistently provide for the child on the part of the mother endangers the child’s physical health, safety and well being and places the child at risk of physical harm.”

Allegations of physical abuse by father under section 300, subdivision (a) were dismissed in the interest of justice. The trial court ordered that R.L. remain in foster care, and that mother and father have only monitored visits. The court ordered family reunification services for father, but denied services for mother due to her failure to reunify with R.L.’s half-sibling in a previous dependency proceeding. This timely appeal followed.

DISCUSSION

Mother and father contend the jurisdictional findings under section 300, subdivisions (b) and (g) are unsupported. Father contends there is insufficient evidence of parental unfitness, and that R.L.’s bad behavior, alone, cannot support jurisdiction under subdivision (b). Father also contends that insufficient evidence supported R.L.’s removal and the order permitting only monitored visits. Mother contends that jurisdiction under subdivision (g) is improper, because, regardless of her failure to provide for R.L., father provided R.L. with food, clothing, shelter, and medical care. We

disagree, finding that substantial evidence supports the trial court's orders, and that the adequacy of jurisdiction under subdivision (g) is nonjusticiable. We therefore affirm.

1. Substantial Evidence Supports the Trial Court's Jurisdictional Findings

"In reviewing the sufficiency of the evidence on appeal, we look to the entire record to determine whether there is substantial evidence to support the findings of the juvenile court. We do not pass judgment on the credibility of witnesses, attempt to resolve conflicts in the evidence, or determine where the weight of the evidence lies. Rather, we draw all reasonable inferences in support of the findings, view the record in the light most favorable to the juvenile court's order, and affirm the order even if there is other evidence that would support a contrary finding. [Citation.] . . . The appellant has the burden of showing that there is no evidence of a sufficiently substantial nature to support the order. [Citations.]" (*In re Cole C.* (2009) 174 Cal.App.4th 900, 915-916, citation omitted.)

The trial court sustained findings that R.L. was a person described by section 300, subdivision (b) based on father's "physical discipline" of R.L. and his inability to control her "acting out behavior." Section 300, subdivision (b) provides for 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 or guardian to adequately supervise or protect the child." (§ 300, subd. (b).)

Father contends his inability to control R.L. is not a proper basis for jurisdiction without a finding of parental unfitness. (See *In re Precious D.* (2010) 189 Cal.App.4th 1251, 1261 (*Precious D.*).) In *Precious D.*, the trial court sustained allegations under subdivision (b) that "Precious 'is unwilling to return to the mother's home and has repeatedly gone AWOL. Additionally, [Mother has] been unable to provide ongoing supervision of this child. Said inability of the child's mother endangers the child's physical and emotional health and safety and places the child at risk of harm.'" (*Id.* at p. 1258.) The trial court concluded that mother's inability to control her daughter's "incorrigible" behavior, such as running away and dating older men, was a sufficient basis for dependency jurisdiction. In reversing, the Court of Appeal concluded that

“dependency jurisdiction may [not] be asserted over an incorrigible child whose parent is neither unfit nor neglectful.” (*Id.* at p. 1261.)

Unlike the facts concerning the mother in *Precious D.*, in this case, father’s inability to control R.L. was not the sole basis for jurisdiction. Instead, the court made an express finding of parental unfitness when it found that father’s “physical discipline [of R.L.] . . . endangers the child’s physical and emotional health and safety and places the child at risk of harm.” R.L. testified father hit her and that his excessive physical discipline contributed to her behavioral problems. Father contends the physical abuse of R.L. was “nonexistent.” Essentially, father is asking us to reweigh the evidence on appeal. It is not our job to reweigh the evidence, or resolve conflicts in the evidence. (*In re Cole C.*, *supra*, 174 Cal.App.4th at p. 916.)

The trial court also sustained allegations under subdivision (g), which provides: “The child has been left without any provision for support.” (§ 300, subd. (g).) Mother contends that because father fed and sheltered R.L., the jurisdictional findings under subdivision (g) are not supported by substantial evidence. We need not consider her argument because the jurisdictional findings under subdivision (b) render mother’s challenge to jurisdiction under subdivision (g) nonjusticiable. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491-1492.) “[I]t is necessary only for the court to find that one parent’s conduct has created circumstances triggering section 300 for the court to assert jurisdiction over the child. [Citations.] Once the child is found to be endangered in the manner described by one of the subdivisions of section 300 . . . the child comes within the court’s jurisdiction, even if the child was not in the physical custody of one or both parents at the time the jurisdictional events occurred. [Citation.] For jurisdictional purposes, it is irrelevant which parent created those circumstances. A jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established. [Citation.] As a result, it is commonly said that a jurisdictional finding involving one parent is “‘good against both. More accurately, the minor is a dependent if the actions of either parent bring [him] within one of the statutory definitions of a dependent.’”

[Citation.] For this reason, an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence.” (*Ibid.*)

2. Substantial Evidence Supports the Trial Court’s Dispositional Findings

Father contends the Department did not meet its burden of proof for removal of R.L., and that informal supervision would have adequately addressed the family’s needs. A child may not be removed from a parent or guardian unless there is *clear and convincing evidence* of “*substantial danger* to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s or guardian’s physical custody.” (§ 361, subd. (c)(1), italics added.) Removal is also permitted when a “minor has been left without any provision for his or her support.” (§ 361, subd. (c)(5).) A trial court’s removal order is reviewed under the substantial evidence standard of review, notwithstanding the evidentiary standard used at trial. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193; see also *In re E.B.* (2010) 184 Cal.App.4th 568, 578 [“The clear and convincing standard was adopted to guide the trial court; it is not a standard for appellate review. [Citation.] The substantial evidence rule applies no matter what the standard of proof at trial.”].)

Contrary to father’s contention, there is sufficient evidence to support removing R.L. from his custody because R.L. testified that father used excessive discipline and hit her. Less drastic means of addressing the Department’s concerns were likely to fail, as father admittedly did not participate in the services offered by the Department. Further, father failed to take advantage of the visitation he was granted and has not addressed his parenting problems, which clearly have a severe impact on R.L., as demonstrated by her out-of-control behavior. Father has denied his abuse of R.L., notwithstanding the contrary evidence, and has placed the blame on R.L. On the above record, we conclude that the removal order of the trial court was supported by substantial evidence.

Father also challenges the order permitting only monitored visitation. We review an order setting visitation terms for abuse of discretion. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2006) 145 Cal.App.4th 692, 699, fn. 6.) As discussed above, substantial evidence supports the trial court's order because there was evidence that father used excessive discipline. Therefore, we cannot say the trial court abused its discretion when it ordered only monitored visits for father.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.