

Filed 2/16/18 In re J.A. CA2/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re J.A. et al., Persons Coming
Under the Juvenile Court Law.

B281433
(Los Angeles County
Super. Ct. No. DK20635)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

V.H. et al.,

Defendants and Appellants.

APPEAL from an order of the Superior Court of
Los Angeles County, Kristen Byrdsong, Commissioner. Affirmed
in part and reversed in part.

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant and Appellant V.H.

Aida Aslanian, under appointment by the Court of Appeal, for Defendant and Appellant G.A.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Jacklyn K. Louie, Principal Deputy County Counsel, for Plaintiff and Respondent.

V.H. (Mother) and G.A. (Father) both appeal from jurisdictional findings and dispositional orders concerning their son, J.A., and their daughter, I.A. At the time of the orders, J.A. was nine and I.A. was two years old.

The trial court found dependency jurisdiction based on an incident in November 2016, in which Father slapped Mother on her face and took a loaded gun out of the house in response to a threat. Father was arrested and charged with misdemeanor domestic battery. The court ordered the children removed from Father, ordered monitored visitation by Father, and adopted case plans that directed both parents to participate in domestic violence and parenting programs.

Mother and Father both argue that the trial court's jurisdiction finding was not supported by substantial evidence. Alternatively, Mother argues that, even if the evidence was sufficient to support jurisdiction based upon Father's conduct, it was not sufficient to support a finding that she is an offending parent. Each parent also contests various portions of the trial court's dispositional orders.

We affirm the finding of jurisdiction under Welfare and Institutions Code section 300, subdivision (b)(1), based upon

Father's conduct.¹ However, we agree with Mother that the evidence was insufficient to support a finding that she is an offending parent. We also agree with both parents that the evidence was insufficient to support jurisdiction under section 300, subdivision (a), which requires proof of a substantial risk that a parent or guardian will inflict serious physical harm "nonaccidentally." Evidence of a risk of intentional harm is absent here. Finally, we find that the trial court abused its discretion in requiring that Father's visits be monitored, as that condition is unnecessary to protect the children. We affirm the trial court's dispositional orders in all other respects.

BACKGROUND

1. *Events Leading to the Dependency Petition*

On November 25, 2016, the day after Thanksgiving, Mother was at her mother's house helping to clean up. Mother's sister told her about a comment that Father had made on a woman's Facebook post. Mother later asked Father how he knew the woman, leading Father to message the relative who had told Mother's sister about the Facebook post (Gohar), asking her not to "meddle in our business."

On November 27, 2016, Father had several telephone conversations with Gohar's brother and others. According to Father, they threatened to kill him.

That night, Mother heard Father arguing with someone on the phone. When Father hung up, Mother saw him loading a gun. Father had been drinking beer.

¹ Subsequent undesignated statutory references are to the Welfare and Institutions Code.

J.A. heard Father arguing on the phone and came out of his room. He saw the gun and asked Father what was happening. Father told him not to worry about it.

There were three firearms in the family home, two registered to Father and one to Mother. They were ordinarily kept in a locked box inside a bedroom closet. Father is a hunter.

When Mother saw Father with the gun, she asked him what was going on. He said it was “none of her business.” He said that “if somebody threatens me they need to know it’s not ok.” Mother told him to stop and not to “do stupid things.” At that point, Father slapped Mother with an open hand on her face and went outside with the gun.

Father had slapped Mother on the face once before, about four or five years before the most recent incident. The previous slap occurred after an argument when Father accused Mother of cheating and she responded sarcastically. Mother did not report the incident at the time.

After Father slapped her on November 27 and went outside with the loaded gun, Mother called the police. Mother later told an investigating social worker that she called the police because she was concerned about Father’s safety. However, when the police arrived that night and spoke to Mother, they observed that she was “shaken” and she kept asking if they had “got him,” referring to Father. She said that she was “in fear of him.” The police arrested Father for misdemeanor domestic battery without traumatic injury pursuant to Penal Code section 243, subdivision (e)(1). The officers also confiscated the firearms in the home. The criminal case against Father was proceeding at the time of the dependency proceedings.

When later interviewed by a county social worker about the events, Father denied going outside with the gun and denied slapping Mother.

2. *The Dependency Proceedings*

On December 12, 2016, the Los Angeles County Department of Children and Family Services (DCFS) filed a two-count petition alleging that the court had dependency jurisdiction over the children under section 300, subdivisions (a) and (b)(1). At the detention hearing that same day, the trial court ordered the children detained from Father and released to Mother. The court ordered Father not to reside in the family home.

DCFS filed its jurisdiction/disposition report (Report) on January 19, 2017. The Report included summaries of several interviews of Mother, Father, and J.A., as well as information from a county social worker's investigation on November 28, 2017, and the police report. Along with a summary of the events, the Report concluded that the children were healthy and well cared for, and the "children and their mother are bonded." J.A. told a social worker that he missed Father and, "I want him back."

A combined jurisdiction and disposition hearing took place on February 17, 2017. Father and Mother argued that the evidence did not support jurisdiction, and Mother also argued that, in the event the court did find jurisdiction, the court should strike the allegations in the petition identifying Mother as an offending parent. The minors' counsel asked that jurisdiction be sustained only under section 300, subdivision (b)(1). Minors' counsel joined the parents in requesting that the court strike the allegations in the petition asserting jurisdiction under section

300, subdivision (a) and alleging that Mother was an offending parent.

The trial court sustained the entire petition. The court found that the parents were not “honest and forthcoming.” The court stated that it did “not believe Father’s version of the facts that he’s never slapped the mother before.” The court found “Father to have the attitude that he is the man in charge of the house and he can do whatever he wants; and if that means loading a gun in front of his child who saw the loaded gun, then that’s what he’s entitled to do.” The court also found that Mother was “minimizing” by stating that she “irritated [Father] and . . . pushed his buttons,” and in downplaying how much Father drank.

The court ordered that “[c]are, custody and control” of the children was “taken from Father and vested with [DCFS].” The children remained with Mother. The court ordered Father to complete programs on domestic violence, parenting and anger management, and permitted only monitored visitation. The court ordered Mother to complete programs on domestic violence for “support group and victims” as well as “developmentally-appropriate parenting.”

DISCUSSION

1. *Father’s Appeal*

a. *Jurisdictional Findings Under Section 300, Subdivision (a)*

Father argues that the evidence was insufficient to support a finding of jurisdiction under section 300, subdivision (a). We agree.

We review the juvenile court’s jurisdictional findings for substantial evidence. (*In re Jeannette S.* (1979) 94 Cal.App.3d 52,

58.) A finding supported by substantial evidence that is “reasonable in nature, credible and of solid value” will be upheld even though substantial evidence to the contrary also exists. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) We “resolve all conflicts and make all reasonable inferences from the evidence to uphold the court’s orders, if possible.” (*In re David M.* (2005) 134 Cal.App.4th 822, 828.)

Section 300, subdivision (a) brings a child within the jurisdiction of the juvenile court when “[t]he 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 or guardian.” A substantial risk of serious future injury may be based “on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or 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).)

There is no evidence here that Father ever abused the children or ever threatened to do so. J.A. denied any physical discipline and reported feeling safe in the home. The family’s neighbor told the investigating social worker that the children seemed happy, and that he often observed Father walking with the children outside. The children’s doctor also reported that there were “no concerns of abuse or neglect” in the children’s records.

On the two occasions when Father struck Mother, his anger was directed toward her, not the children. As discussed below, such physical violence directed against a spouse does warrant consideration of whether the children might be accidental victims of such incidents in the future. But it cannot alone establish a

“substantial risk” of *nonaccidental* injury to the children, as section 300, subdivision (a) requires.

In *In re Daisy H.* (2011) 192 Cal.App.4th 713, 715–716 (*Daisy H.*), this court reversed a trial court’s jurisdictional findings under section 300, subdivision (a) that were based upon prior incidents in which the father had “choked Mother and pulled her hair” and had threatened to kill the mother while speaking to the child. (*Id.* at p. 715.) Despite the violence and threats against the mother, this court concluded that “[t]here was no evidence that Father ever intentionally harmed any of his children or that the children were at risk of intentional harm.” (*Id.* at p. 716.) Similarly, here, Father’s conduct in slapping Mother is not evidence of a risk that the children will be harmed intentionally.

Respondent cites *In re Giovanni F.* (2010) 184 Cal.App.4th 594 (*Giovanni*) for the proposition that “[d]omestic violence is nonaccidental.” (*Id.* at p. 600.) While that is certainly true, the question under section 300, subdivision (a) is whether the particular domestic violence at issue provides sufficient evidence of a substantial risk of serious physical harm inflicted on the *child* nonaccidentally in the future. The facts in *Giovanni* supported such a finding. The father had assaulted the mother while the father was driving a car with both the mother and his infant son Giovanni as passengers. As the court observed, “[b]y driving with one hand on the steering wheel, and using his other hand to hit and choke [the mother], [the father] placed Giovanni, a passenger, at substantial risk of suffering serious physical harm.” (*Ibid.*) Moreover, that driving incident culminated in a physical struggle between the father and the mother over

possession of Giovanni's car seat while Giovanni was still in it. (*Id.* at p. 601.)

Such intentional conduct by Giovanni's father toward the mother knowingly and recklessly placed Giovanni at direct risk from the father's abuse. While the father did not aim his abuse at Giovanni as the immediate target, his conduct was "nonaccidental" in a sense similar to the intentional act of shooting at one person and killing another. (See *People v. Scott* (1996) 14 Cal.4th 544, 551 [explaining that the criminal law doctrine of "transferred intent" connotes a policy "that a defendant who shoots at an intended victim with intent to kill but misses and hits a bystander instead should be subject to the same criminal liability that would have been imposed had he hit his intended mark"].)

Evidence of such intentional abuse that consciously risked immediate injury to the children was absent here. By slapping Mother, Father did not knowingly place the children in imminent danger. That conduct, while intentional and reprehensible, was not evidence of a risk of future intentional harm to the *children*.

b. *Jurisdictional Findings Under Section 300, Subdivision (b)(1)*²

While we conclude that the evidence was insufficient to support jurisdiction under section 300, subdivision (a), we agree with respondent and the trial court that the evidence supported jurisdiction under section 300, subdivision (b)(1). Father's conduct in striking Mother, along with his dangerous behavior of having a loaded firearm that he intended to use to confront

² While Father's brief addresses only jurisdiction under section 300, subdivision (a), he joins in Mother's argument challenging dependency jurisdiction on any basis.

persons with whom he was having an argument, demonstrated a substantial risk of unintentional injury to the children in the future.

Section 300, subdivision (b)(1) provides for jurisdiction based upon proof that a child has suffered, or that there is a substantial risk 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)(1).) Physical violence between parents may provide evidence supporting jurisdiction under section 300, subdivision (b)(1), “but only if there is evidence that the violence is ongoing or is likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm.” (*Daisy H.*, *supra*, 192 Cal.App.4th at p. 717.)

We conclude that the circumstances of the domestic violence in this case are sufficient to support a finding of jurisdiction under section 300, subdivision (b)(1). The argument on November 27, 2016, was not the first occasion on which Father slapped Mother. Although Mother reported that the prior incident was four or five years ago, repeated physical violence against a spouse can present a risk of future harm to the children. Past violence in a relationship is a good predictor of similar behavior in the future. (*In re T.V.* (2013) 217 Cal.App.4th 126, 133; *In re E.B.* (2010) 184 Cal.App.4th 568, 576 (*E.B.*) [citing studies demonstrating that “once violence occurs in a relationship, the use of force will reoccur in 63% of these relationships”].) Children can be unintentional victims of such violence. (See *In re Heather A.* (1996) 52 Cal.App.4th 183, 194 [children were “put in a position of physical danger” from ongoing violence between parents “since, for example, they could wander

into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg, or by [the mother] falling against them”].)

Father did not use severe force here. However, the danger posed by his conduct is exacerbated by Father’s decision to resort to physical violence against Mother after he had been drinking and while he had a loaded gun that he was intending to use to confront persons who were coming to his home.³ Should he engage in similar violent conduct in the future—while angry, intoxicated and in possession of a loaded firearm—there is a substantial risk that the children could become accidental victims of serious or even deadly violence.

Our colleagues in Division Eight of this district recently upheld dependency court jurisdiction based in part on a father’s conduct in keeping an accessible loaded firearm in the home. (*In re Yolanda L.* (2017) 7 Cal.App.5th 987 (*Yolanda L.*)) The father in that case had been the subject of a narcotics investigation and

³ There was no evidence that Father has an ongoing drinking problem, and there was conflicting evidence concerning how much he had to drink on the night of the incident. Mother originally told a social worker that Father had “three big cans of beer,” but later said he had drunk only one beer and “one or two sips” of another. Father said he had half a beer. However, J.A. said that Father was “drunk.” The trial court found that the parents were not “honest and forthcoming” and concluded that Mother “was minimizing.” On appeal, we resolve conflicts in favor of the prevailing party and defer to the trial court’s credibility findings. (*E.B.*, *supra*, 184 Cal.App.4th at p. 575.) We therefore accept that Father had been drinking and was apparently intoxicated at the time he had a loaded gun and struck Mother in the face.

was arrested for transporting methamphetamine in his car. He told the arresting officers that he had a gun in a closet at his house. (*Id.* at pp. 989–990.) Police found a loaded semiautomatic handgun in a hall closet on a shelf that was accessible to the children. (*Id.* at p. 990.) The court held that “dependency jurisdiction may be based on evidence that the parent stored a loaded gun in such a manner that it could be accessed by a child.” (*Id.* at p. 995.)

Although this case does not involve improper gun storage⁴ or participation in ongoing criminal conduct, the circumstances here concerning Father’s handling of his firearm are no less concerning than the circumstances in *Yolanda L.* The risks posed by the use of a loaded gun in anger are comparable to the risks posed by the storage of a loaded gun in a manner accessible to children. Both are examples of irresponsible handling of firearms in a manner that could injure children. In addition, Father was not truthful about his conduct, initially stating that the gun was not loaded and then later denying that he had gone outside with the gun. He also denied that he had slapped Mother. Here, as in *Yolanda L.*, “father’s lack of insight into the danger posed by the loaded gun in the home provided support for the potential of future risk.” (*Yolanda L.*, *supra*, 7 Cal.App.5th at p. 996.)

c. Visitation Order

Father also challenges the trial court’s dispositional order permitting him only monitored visits with the children. Father argues that he “never made use of the gun in this case,” he no longer has access to guns, and unmonitored visits would be in the

⁴ The evidence was undisputed that Father ordinarily locked his guns in a box. J.A. said that he did not know where the guns were stored and had never held one.

children's best interest. We agree that the order for monitored visitation in this case abused the juvenile court's discretion.

A juvenile court's visitation orders may be reversed only on a clear showing of abuse of discretion. (*In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 465.) However, the juvenile court's discretion is constrained by its statutory authority. (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773.)

The juvenile court has authority to limit and control a parent's visitation rights under section 361, subdivision (a)(1) and section 362. (*In re Julien H.* (3 Cal.App.5th 1084, 1090.) Under section 361, when a minor "is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian." (§ 361, subd. (a)(1).) But the limitations the court orders "may not exceed those necessary to protect the child." (*Ibid.*) And section 362 only provides authority for the court to "make any and all *reasonable* orders for the care, supervision, custody, conduct, maintenance, and support" of a child who is a dependent of the court. (§ 362, subd. (a), *italics added.*)

Here, the requirement that Father's visits must be monitored was not necessary to protect the children. As mentioned above, there is no evidence in the record that Father has an ongoing drinking problem. Nor is there any evidence that Father has mistreated or endangered the children other than his conduct involving the firearm in the incident leading to jurisdiction in this case. The evidence was undisputed that Father otherwise stored his guns properly. In any event, the guns were confiscated, and there is no reason to believe that the

children will be exposed to any weapons during their visits. Consequently, the requirement that Father's visits be monitored has no relationship to the conduct leading to jurisdiction and is unreasonable.

1. *Mother's Appeal*

a. *Jurisdictional Findings*

Mother argues that the evidence was insufficient to support dependency court jurisdiction at all. Alternatively, she argues that the evidence does not support finding that she was an offending parent. We reject the first argument for the reasons discussed above. However, we agree that the evidence does not support any finding that Mother was culpable in the conduct by Father that endangered the children.

As Mother recognizes, this court could affirm the finding of dependency jurisdiction based upon Father's conduct without reaching the issue of whether Mother is an offending parent. "When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence." (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) In particular, "[b]ecause the juvenile court assumes jurisdiction of the child, not the parents, jurisdiction may exist based on the conduct of one parent only." (*In re J.C.* (2014) 233 Cal.App.4th 1, 3.)

However, we have the discretion to consider jurisdictional findings even if jurisdiction can be upheld on other grounds if those findings could be prejudicial in future dependency proceedings or could have other consequences beyond

jurisdiction. (*Daisy H.*, *supra*, 192 Cal.App.4th at p. 716; *In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763.) The findings concerning Mother could have an effect on this or future dependency proceedings and could perhaps affect her future career.⁵ We therefore exercise our discretion to consider Mother’s arguments concerning the trial court’s finding that she was an offending parent.⁶

The record does not contain any evidence from which one could reasonably conclude that Mother failed to protect the children from Father. With respect to the incident on November 27, 2016, Mother called the police after Father had slapped her and she had tried unsuccessfully to dissuade him from taking the loaded firearm outside. The call resulted in Father’s arrest and the entry of a restraining order in the criminal case.⁷ In calling the police after her failed attempt to discourage her husband’s conduct, she acted appropriately and

⁵ The record shows that Mother has taken steps to become a deputy sheriff.

⁶ The trial court made oral findings that “the entire petition as alleged is true.” The petition included allegations that “[t]he children’s mother . . . failed to protect the children in that the mother allowed the father to reside in the children’s home and have unlimited access to the children.” The trial court also found that “allowing Father to continue exercising his control as he has in the past by slapping her means that [Mother] failed to act in a protective capacity.”

⁷ Mother did decline an emergency protection order on the night of the incident. However, it appears that the refusal was moot in light of the restraining order that was subsequently entered in the criminal case against Father.

took the steps that were available to her to protect herself, the children, and Father.

With respect to the prior incident four or five years ago, so far as the record shows it was the only other time Father had slapped her in their 20-year marriage. The incident did not involve the children. Mother could not be faulted for failing to anticipate that Father would slap her again on the night of the incident years later, much less for failing to predict that he would use a loaded gun in anger with his children nearby.

The record in this case concerning Mother's conduct is similar to the facts in *In re Jonathan B.* (2015) 235 Cal.App.4th 115 (*Jonathan B.*.) In that case, the father punched the mother in the face while arguing in 2009. In 2014, after the couple had separated, the mother gave the father a ride home from a party that he had attended with the children. That led to an argument during which the father punched the mother in the face and slapped her. The mother immediately reported the incident to the police. (*Id.* at p. 117.) In subsequent dependency proceedings, the trial court sustained the petition, including the allegation that the mother failed to protect the children “ ‘by allowing . . . father to frequent the children’s home and have unlimited access to the children.’ ” (*Id.* at pp. 117–118.)

Our colleagues in Division Three reversed the jurisdictional findings against the mother. (*Jonathan B.*, *supra*, 235 Cal.App.4th at pp. 119–121.) The court concluded that the mother’s failure to foresee that the father would punch and slap her during the 2014 incident was “not unreasonable; the only other time father had assaulted mother was five years prior when they were living together.” (*Id.* at p. 120.) The court also noted that the mother “took the proper actions immediately after father

attacked her” by going to the police and obtaining a restraining order. With respect to the first punching incident in 2009, although the mother did not report the incident, “that assault was too distant in time to show that mother would, at the time of the jurisdiction hearing, choose not to address an assault by father.” (*Ibid.*) The court further noted that “a sustained jurisdictional finding against mother would, in effect, penalize her for having brought the incident to the authorities’ attention when, in fact, this is the kind of response that should be encouraged.” (*Id.* at p. 121.)

Similarly, here, Mother could not have reasonably anticipated the incident of November 27, 2106, based upon one violent argument four or five years ago. She reported the incident to the police when it occurred. She did not fail to protect the children, and the trial court’s findings against Mother therefore cannot be sustained.

b. *Dispositional Orders Concerning Mother*

The trial court ordered Mother to participate in parenting classes and a domestic violence class for victims. Mother argues that this order should be reversed if Mother is found to be a nonoffending parent.

We conclude that the dispositional order with respect to Mother was within the trial court’s discretion even though Mother is not an offending parent. A dispositional order may reach a nonoffending parent, so long as it is reasonable and “‘designed to eliminate [the] conditions that led to the court’s [still valid jurisdictional] finding.’” (*In re D.M.* (2015) 242 Cal.App.4th 634, 639, quoting § 362, subd. (d).) Here, the domestic violence class for victims is directly related to the violence that Mother experienced from Father’s conduct, which

provides the basis for dependency jurisdiction. While a parenting class is less directly related to the conduct at issue, the trial court could reasonably have concluded that such a class was necessary to address appropriate responses to Father's conduct, particularly in light of the trial court's conclusion that Mother was not "honest and forthcoming" and was "minimizing." We therefore decline to reverse the trial court's dispositional orders with respect to Mother.

DISPOSITION

The trial court's jurisdictional findings under Welfare and Institutions Code section 300, subdivision (a) and its findings against Mother as an offending parent are reversed. The portion of the trial court's dispositional order requiring that Father's visits with the children be monitored is also reversed. In all other respects the order is affirmed.

NOT TO BE PUBLISHED.

LUI, J.

I concur:

CHANEY, J.

ROTHSCHILD, P. J., concurring and dissenting.

I concur in the majority opinion insofar as it reverses the juvenile court's jurisdictional findings under Welfare and Institutions Code section 300, subdivision (a),¹ its finding against Mother as an offending parent, and its order limiting Father's visitation. I respectfully dissent, however, from the majority's conclusion that Father's conduct supports the jurisdictional finding under section 300, subdivision (b)(1). (Maj. opn. *ante*, at pp. 9-12.)

At the outset, in reversing the section 300, subdivision (a) finding, the majority concedes that "Father's conduct in slapping Mother is not evidence of a risk that the children will be harmed intentionally." (Maj. opn. *ante*, at p. 8.) Nor, however, is it evidence of a risk that the children will be harmed accidentally.

The majority concludes that "the circumstances of the domestic violence in this case are sufficient to support a finding of jurisdiction under section 300, subdivision (b)(1)." (Maj. opn. *ante*, at p. 10.) In so doing, the majority characterizes what happened on November 27, 2016, when Father slapped Mother as "physical violence." (Maj. opn. *ante*, at p. 10.) Then, pointing to a slapping incident which occurred four or five years earlier, the majority asserts that "repeated physical violence against a spouse can present a risk of future harm to the children," and "[p]ast violence in a relationship is a good predictor of similar behavior in the future." (Maj. opn. *ante*, at p. 10.) Although the majority correctly sets forth applicable law, I do not agree that these two incidents occurring four or five years apart evince *physical violence likely to recur*.

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

The two cases cited by the majority for the “past violence” principle both involve *severe and ongoing* domestic violence. *In re T.V.* (2013) 217 Cal.App.4th 126 involved a father who had several felony convictions for spousal abuse and parents who had a lengthy history of domestic violence often requiring police intervention. (*Id.* at pp. 135-137.) The most recent incident involved the father punching the mother in the face, knocking her to the ground, and stepping on her neck. (*Id.* at p. 130.) And in *In re E.B.* (2010) 184 Cal.App.4th 568, the mother, an abuser of alcohol, remained in an abusive relationship with the father, a registered sex offender, in spite of ongoing domestic altercations between them which occurred while the children were in the home, so as to support the juvenile court’s finding that the altercations endangered the children. (*Id.* at p. 572.)

In contrast, two slapping incidents occurring four or five years apart do not represent a pattern of domestic violence warranting juvenile court intervention. (See *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717 [physical violence between parents occurring seven years earlier is too remote in time to warrant jurisdiction].) “[D]omestic violence” is defined as “abuse” against specified persons, such as a spouse, that includes “plac[ing] a person in reasonable apprehension of imminent serious bodily injury to that person or to another.” (Fam. Code, §§ 6203, 6211.) Here, Mother and Father had a good relationship. Mother did not fear Father. Mother called the police not because Father slapped her, but because she feared what might happen if Father went outside with the loaded gun. This was not domestic violence.²

² Father was charged not with domestic violence, but rather, with misdemeanor domestic battery, which is defined as

Acknowledging that “Father did not use severe force” when he slapped Mother, the majority nonetheless asserts that “the danger posed by [Father’s] conduct is exacerbated by [his] decision to resort to physical violence against Mother after he had been drinking and while he had a loaded gun that he was intending to use to confront persons who were coming to his home.” (Maj. opn. *ante*, at p. 11.) Apparently construing Father’s slap to Mother’s face as an act of extreme physical violence, the majority speculates that “[s]hould [Father] engage in similar violent conduct in the future—while angry, intoxicated and in possession of a loaded firearm—there is a substantial risk that the children could become accidental victims of serious or even deadly violence.” (Maj. opn. *ante*, at p. 11.) It is too far a stretch, given all the facts in this case, to assume that the same, or similar, conduct is likely to recur. Indeed, the circumstances in this case are less serious than those in *In re J.N.* (2010) 181 Cal.App.4th 1010, where the Court of Appeal determined there was insufficient evidence warranting jurisdiction. There, the behavior of a parent driving while intoxicated with three children in the car and causing serious injury to one of them was deemed insufficient to warrant dependency jurisdiction. The appellate court’s reasoning was that “[d]espite the profound seriousness of the parents’ endangering conduct on the one occasion in this case, there was no evidence from which to infer there is a substantial risk such behavior will recur.” (*Id.* at p. 1026.) The court explained that “[i]n evaluating risk based upon a single episode of endangering conduct, a juvenile court should consider the nature of the conduct and all

“any willful and unlawful use of force or violence upon the person of another.” (Pen. Code, §§ 242, 243, subd. (e)(1).)

surrounding circumstances. It should also consider the present circumstances, which might include, among other things, evidence of the parent's current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs, or other steps taken, by the parent to address the problematic conduct in the interim, and probationary support and supervision already being provided through the criminal courts that would help a parent avoid a recurrence of such an incident.” (*Id.* at pp. 1025-2026.)

And so it is here. This family had no history of domestic violence, no history with the Department of Children and Family Services, and Father had no criminal record. J.A. felt safe in the home, had no fear of either Father or Mother, and denied any physical discipline. Father kept his guns unloaded in a locked safe, and J.A., who had never held a gun in his hands, had no knowledge of where in the house the guns were located. J.A. was in his room with the door closed when the incident occurred. Father was not intending to confront the unwelcome visitors inside the home. Rather, apparently to protect his family from any gunfire danger, he was on his way out of the house when Mother stopped him. Mother described Father as “a very calm person,” explaining that this was the first time in 20 years that she had seen him so angry. And by the time of trial, Father had already participated in anger management classes, for which the court commended him. In short, although I do not condone Father's handling a loaded gun in the home while intoxicated, based upon all the circumstances, jurisdiction is not warranted.

Lastly, I disagree with the majority's drawing an analogy to *In re Yolanda L.* (2017) 7 Cal.App.5th 987, a case in which a loaded gun was accessible to young children of a father actively

engaged in drug trafficking. Although the majority recognizes that the instant case does not involve improper gun storage or participation in ongoing criminal conduct (maj. opn. *ante*, at p. 12), it nonetheless contends “[t]he risks posed by the use of a loaded gun in anger are comparable to the risks posed by the storage of a loaded gun in a manner accessible to children,” and maintains that “[b]oth are examples of irresponsible handling of firearms in a manner that could injure children.”³ (Maj. opn. *ante*, at p. 12.) I disagree. Consideration must be given not only to Father’s conduct in loading the handgun, but also, to the severity of his conduct. In my view, the seriousness of Father’s conduct pales in comparison to that of the father in *Yolanda L.*

Indeed, the *Yolanda L.* court was careful to point out that jurisdiction was based not only on storing a loaded handgun in a location that was accessible to the children, but also on the father’s criminal activity and possession of three pounds of methamphetamine found in his truck. Although the father’s guns had been confiscated, the evidence showed that his criminal activity was likely to continue and that guns are “tools of the trade” in his drug trafficking business. (*In re Yolanda L.*, *supra*, 7 Cal.App.5th at p. 996, internal quotations omitted.) Thus, “there was substantial evidence from which the juvenile court could infer that the conduct was likely to recur and *did not represent a momentary lapse in judgment.*” (*Id.* at p. 994, italics added.) Not so here. Based on this record, Father’s actions represented a momentary lapse in judgment.

³ In reaching this conclusion, the majority overlooks the fact that the petition omits any reference to Father holding a loaded handgun while slapping Mother. In fact, the petition is silent with respect to the handgun.

Accordingly, I would reverse the jurisdictional findings in their entirety, and reverse the dispositional order as well.

ROTHSCHILD, P. J.