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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re R.B., A Person Coming Under the  
Juvenile Court Law.

B228517  
(Los Angeles County  
Super. Ct. No. CK82848)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

GREGORY S.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County.  
Randolph M. Hammock, Juvenile Court Referee. Affirmed.

Darlene Azevedo Kelly, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant  
Deputy Counsel and Kim Nemoy, Deputy County Counsel, for Plaintiff and  
Respondent.

Appellant Gregory S. (Father) appeals the juvenile court's jurisdictional and dispositional orders. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *A. Petition and Detention*

R.B. (R.), the child of Father and Kimberly B. (Mother), was born in 2007. Due to his premature birth, he suffers from asthma and other respiratory problems. He came to the attention of the Department of Children and Family Services (DCFS) in June 2010, when he was two. On June 22, R. was returned from an overnight visit with Father with multiple bruises and scratches. Mother took R. to a hospital for an examination. Medical personal documented the presence of multiple bruises on his face, arms, shoulder and thigh, an abrasion on his knee, and a hematoma with an abrasion on his forehead.<sup>1</sup> Mother reported that this was not the first time R. had been returned from a visit with Father with physical injuries. Earlier that year, in February 2010, Mother had noted the presence of a half-inch laceration on R.'s lower lip after a visit with Father.<sup>2</sup> Mother also reported that Father had engaged in domestic violence in the past, choking and hitting her, and that in November 2007, during an exchange of R., Father had slapped Mother multiple times, hitting R. in the process.<sup>3</sup> Father denied any abuse and reported

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<sup>1</sup> Two months earlier, in April 2010, DCFS received a referral contending among other things that Father had driven R. without a car seat and dressed him in girl's clothing. DCFS was in the process of investigating that referral when it received notice of the June allegations.

<sup>2</sup> Father told Mother the boy had fallen. Mother reported the incident to police who took pictures and prepared a report. Mother informed the caseworker that she had taken the boy to a doctor who had said the injury should have had stitches before it began to heal. The caseworker observed a small scar at the location.

<sup>3</sup> Mother had reported the incident to police. Father was arrested and pled nolo contendere to assault. Father had also been arrested in August 2007, shortly after R. was  
(*Fn. continued on next page.*)

that the boy had accidentally fallen down porch steps when being supervised by his live-in girlfriend, Latoya H.<sup>4</sup> Father also denied ever being physically abusive toward Mother.

At the detention and status hearings that followed, the court placed R. with Mother and ordered monitored visits for Father, once Father was released from incarceration.<sup>5</sup>

### *B. Relevant Family Law Proceedings*

The parties have a long and contentious history in family law court. In August 2007, Father, who was not named on R.'s birth certificate, filed a petition to establish paternity. Mother responded by seeking a protective order. In September 2007, the court issued the protective order and granted the paternity petition, giving Father visitation rights. A few days later, Father sought an order to show cause re contempt because Mother was refusing to allow visitation. The October 2007 alleged threat and November 2007 alleged assault resulted in another trip to family court, where Mother sought changes in visitation. In December 2007, Father filed a second motion contending Mother was not allowing the court-ordered visitation. In April 2008, the court ordered Father to obtain training to handle R.'s breathing problems and ordered the parties to enroll in a Web site

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born, after demanding that Mother allow him to take the newborn infant to his home. Police arrived and according to their report, Father yelled and cursed at them, balled his hands into fists and got into a fighting stance. Father was arrested for obstructing or threatening an officer. In October 2007, Mother had reported that Father threatened her. A charge was filed, but later dismissed. Mother reported another threat in April 2010.

<sup>4</sup> Latoya related a similar version of events.

<sup>5</sup> In July 2010, Father was arrested and incarcerated for several weeks after being involved in a physical altercation outside a nightclub with an unrelated adult male.

designed to allow parents to communicate without the necessity of face-to-face contact.

In July 2008, Father again petitioned the court for redress based on Mother's alleged refusal to allow visitation. In September 2008, Minor's counsel submitted a declaration expressing the view that Mother was unreasonably withholding visitation.<sup>6</sup> Subsequently, the court-appointed evaluator issued a report which concluded that Father had "poor impulse control, impaired judgment, . . . little respect for the courts and police," and "difficulty controlling his anger." The report also stated that Father had not complied with court orders to take a parenting class and to undergo training necessary to assist R. with breathing problems. The evaluator did not believe that Father posed a risk to R., and recommended that Father be given two three-hour visits with R. weekly, to be increased to seven hours when Father became trained in assisting R.'s breathing problems and completed a parenting course. The report also recommended that Father complete a 12-month anger management/domestic violence course and that Mother undergo counseling. The court issued an order that allowed Father more extensive visitation than recommended, instructed Father to enroll in and complete a parenting class and a 52-week domestic violence class and instructed Mother to undergo counseling.

Shortly thereafter, the parties stipulated to a new visitation schedule. This did not, however, end the contentiousness. In July 2009, Mother was back in court stating Father had threatened her and called her names because she questioned whether he had a car seat for R., and claimed he had an outstanding warrant. In January 2010, Father again contended that Mother was obstructing visitation.

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<sup>6</sup> In February 2008, the court had appointed counsel for R. and ordered a child custody evaluation. The evaluation did not take place until the end of 2008.

Mother responded that Father had let months go by without visiting R. When the section 300 petition was filed (June 2010), the parties were preparing for trial and a conciliation court conference.

### *C. Jurisdiction and Disposition*

The jurisdictional/dispositional report noted that Father had completed four months of anger management counseling, but recommended a full 52-week course on domestic violence and anger management, plus counseling and parenting classes. The report further noted that R. was closely bonded with Mother and seemed comfortable in her care, but stated that the evidence of continuing disputes with Father over visitation indicated that Mother would benefit from counseling and family preservation services.

The jurisdictional/dispositional hearing was held September 20, 2010. Father denied ever hitting or threatening Mother. Concerning R.'s split lip, Father stated that R. had come to him for a visit with that injury, and that he had been unable to question Mother about it due to the restraining order. On June 22, Father was at work when he got a call from Latoya stating that R. had fallen off the porch steps while chasing after Latoya's four-year-old daughter and had bumped his head. The three were on their way to return R. to Mother. Latoya brought R. to Father's place of work so that Father could examine the injury. Father did not seek medical attention because he did not believe R. was seriously hurt and did not want R. to be returned late from the visit. With respect to his recent arrest for assault, Father stated that the charges had been dropped.

Bernice L., Mother's aunt, testified that R. was born premature. The day he was released from the hospital, Mother took R. to visit Bernice. Father came by and asked to take R. to his mother's house. When Mother refused, Father blocked Mother's car, then tried to wrest R., who was in a baby carrier, from Mother.

Father was using abusive language. Bernice asked Father to leave and when he refused, called the police. On another occasion, Bernice overheard Father say he would make Mother “disappear” and “teach [R.] to hate her.”

Latoya testified that she observed Father’s behavior with R. during visitation and that Father always behaved appropriately. She had never seen him hit or threaten R. He was never violent or verbally abusive toward her or her daughter. Latoya testified that on June 22, R. had accidentally fallen from the porch steps while running to the car. He was trying to imitate Latoya’s daughter who had jumped off the porch. The area where he fell was covered in gravel and asphalt. R. tried to break his fall with his hands and hit his hands, knees and head on the ground.

After hearing the evidence and argument of counsel,<sup>7</sup> the court found jurisdiction appropriate under Welfare and Institutions Code section 300, subdivisions (a) and (b) and made the following specific finding:<sup>8</sup> “On 6/22/10, [R.] sustained several injuries, including a considerable bump/bruise to his head, minor swelling, minor bruising and/or minor scratches to his cheek area, his arm and leg. Given [Father’s] prior unresolved history of violence and anger management issues, and given the totality of the evidence, including the prior physical injuries sustained by the child, while in the immediate custody and control of [Father], this Court finds that these injuries were caused directly by [Father].”<sup>9</sup>

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<sup>7</sup> R.’s counsel joined Father in arguing that the evidence was insufficient to support jurisdiction.

<sup>8</sup> Undesignated statutory references are to Welfare and Institutions Code.

<sup>9</sup> For purposes of section 300 of the subdivision (a) finding, the court further found: “As such, the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by [Father].” For purposes of the subdivision (b) finding, the court further found that R. “has suffered, or there is a substantial risk that the child will suffer, serious physical harm.” The court dismissed, *(Fn. continued on next page.)*

In making its findings, the court stated that it did not find Father credible. Taking into account Father’s “past violent conduct” and “continuing denials and refus[als] to take any responsibility for anything,” the court found that the preponderance of the evidence established that Father had intentionally caused the injuries to R. The court ordered Father to undergo individual counseling to address case issues, including anger management, and to participate in a parenting class.

## **DISCUSSION**

### *A. Jurisdiction*

Father contends the court erred in sustaining the jurisdictional allegations because the evidence did not support that R. was at a substantial risk of serious physical harm from Father. We disagree.

In order to assert jurisdiction over a minor, the juvenile court must find that he or she falls within one or more of the categories specified in section 300. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) DCFS bears the burden of proving by a preponderance of the evidence that the minor comes under the juvenile court’s jurisdiction. (*Ibid.*; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.) “We review the juvenile court’s jurisdictional findings for sufficiency of the evidence.

[Citations.] We review the record to determine whether there is any substantial evidence to support the juvenile court’s conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court’s orders, if possible. [Citation.]” (*In re David M.* (2005) 134 Cal.App.4th 822, 828.) A finding is not supported by substantial evidence if it is based solely on

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without objection from DCFS, allegations raised under section 300, subdivision (e), which covers severe physical abuse. The court also dismissed allegations of domestic violence.

unreasonable inferences, speculation, or conjecture. (*In re H.B.* (2008) 161 Cal.App.4th 115, 120.)

Here, the court found jurisdiction appropriate under section 300, subdivision (a). A child is within the jurisdiction of the juvenile court under those subdivisions if he or she “has suffered, or there is a substantial risk that [he or she] will suffer, serious physical harm,” harm that is “inflicted nonaccidentally upon the child by the child’s parent or guardian.” Under the provisions of section 300, subdivision (a), “a court may find there is a substantial risk of serious future injury 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 which indicate the child is at risk of serious physical harm.”

The evidence here supported that Father twice inflicted physical injury on R. in 2010. The boy was found to have bruises on his body and a hematoma with an abrasion on his head after a June 2010 visit, and a split lip after a February 2010 visit. Father’s explanations for the injuries were not found credible by the court. These two incidents were alone sufficient to support jurisdiction. (See *In re J.N.* (2010) 181 Cal.App.4th 1010, 1025 [“[P]ast harmful conduct is relevant to the current risk of future physical harm to a child” if there is “some reason beyond mere speculation to believe they will reoccur.”].) Father contends that R. suffered no serious injuries on either occasion. The juvenile court need not wait for a child to be seriously injured to intervene, but may base its jurisdictional decision on the manner in which less serious injuries were inflicted. (See § 300, subd. (a); *In re Heather A.* (1996) 52 Cal.App.4th 183, 194-195.) Due to the child’s tender age, blows to his head and mouth could easily have resulted in severe or irreparable injury. Moreover, the evidence supported that Father is a physically violent person who has a recurring anger problem which causes him to lash out. Thwarted in his



request to take R. for a visit, he attempted to grab the child from Mother when R. was a fragile infant. He repeatedly threatened Mother with physical violence. He struck Mother on at least one occasion when R. was within range of his blows, accidentally striking R. in the process.<sup>10</sup> Having concluded that Father deliberately struck R. twice in the past, the court could reasonably conclude based on Father's other violent and aggressive behavior, there was a substantial risk that Father would physically injure R. in the future. Jurisdiction was clearly warranted under section 300, subdivision (a).<sup>11</sup>

### *B. Disposition*

After finding that a child is a person described in section 300 and therefore the proper subject of dependency jurisdiction, the court must determine "the proper disposition to be made of the child." (§ 358.) Father contends that having placed R. with his custodial parent -- Mother -- where he was safe, dependency jurisdiction should have been terminated and the matter returned to family court for further proceedings.

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<sup>10</sup> Father suggests that the reports of his aggressive behavior came solely from Mother, who should be viewed as a less than credible witness due to the couple's ongoing custody dispute. We note that Father was convicted of assaulting Mother, that the maternal aunt confirmed several of Mother's reports, and that a police officer reported that Father had engaged in aggressive and threatening behavior toward him.

<sup>11</sup> Father further contends substantial evidence did not support the finding under subdivision (b) that R. suffered or was at risk of suffering serious physical harm due to neglect. "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 such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence." (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

Section 364 establishes that juvenile courts have discretion to continue jurisdiction even when they leave the child in the home of the custodial parent. (See *In re Gabriel L.* (2009) 172 Cal.App.4th 644, 650 [“Section 364 establishes procedures for review hearings for children who have been adjudged dependent children, but have not been removed from their parents. When proceeding under section 364, because the child is in placement with a parent, the court is not concerned with reunification, but with determining whether continued supervision is necessary in the family home.”]; *In re Pedro Z.* (2010) 190 Cal.App.4th 12, 20 [“[W]hen the child remains in a parent’s home, the court reviews the status of the case every six months under section 364; under such review, the court is not concerned with reunification, but in determining ‘whether the dependency should be terminated or whether further supervision is necessary.’”].) “Unlike the situation in which the child is removed from the home and court-ordered services are statutorily limited to 18 months [citation], nothing in the statutes or rules limits the time period for court supervision and services when the child remains in the home [citations]. If supervision is no longer required, the court simply terminates the dependency. Otherwise, the state may continue to provide supportive services and supervision to parents until the dependent minors reach their majority.” (*In re Joel T.* (1999) 70 Cal.App.4th 263, 267-268.) After making the decision to leave the minor with a custodial parent, “[t]he juvenile court has broad discretion to determine what [disposition] would best serve and protect the child’s interest and to fashion a dispositional order in accordance with this discretion.” [Citation.] The reviewing court will not reverse the court’s order in the absence of a clear abuse of discretion. [Citation.]” (*In re Gabriel L., supra*, 172 Cal.App.4th at p. 652, quoting *In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.)

Father’s contention that family court is the correct forum to adjudicate the parties’ disputes ignores the conditions that brought R. to the attention of DCFS.

Family court can resolve custody disputes, but once a child has suffered physical injury and is at risk of future injury, dependency court becomes the more appropriate option. Although the juvenile court is permitted to terminate jurisdiction once the child is safely in the home of a nonoffending parent and an order is in place restricting the visitation rights of the offending parent, the statutory scheme allows the court to continue jurisdiction as long as continued monitoring and/or provision of services appears beneficial to the child and the family. Here, the court concluded that supervision of Mother and provision of services to Father would be in R.'s best interests. This was supported by the caseworker's recommendations. It was also supported by the record in the family law proceeding, which makes clear that neither party respected the authority of the family court and that both felt free to ignore its orders.<sup>12</sup> Assisted by DCFS personnel, the juvenile court was in a superior position to monitor the family and ensure that R. was protected. In concluding that the family required continued supervision for the time being, the juvenile court did not abuse its discretion.

Finally, Father contends the court abused its discretion in not requiring Mother to participate in services because Mother "was not without fault" and "her behavior contributed to the problems in this case." "The juvenile court has broad discretion to determine what would best serve and protect the child's interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion." (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474.) The juvenile court's primary concern was the protection of R., not the parents' relationship. Mother did not pose a danger to R. She had

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<sup>12</sup> Mother sometimes withheld visitation and failed to enroll in the Web site designed to facilitate communication without conflict. Father did not participate in the 52-week domestic violence program and failed to undergo the training needed to assist R. with his breathing problems.

already participated in 10 hours of counseling at the behest of the family court. The juvenile court was not obliged to order her to undergo further counseling. In view of its findings that R. was at risk of physical harm while in Father's care and that the boy was safe with Mother, the court did not abuse its discretion in requiring Father, but not Mother, to participate in reunification services.

### **DISPOSITION**

The jurisdictional and dispositional orders are affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.