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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re ERIC D., a Person
Coming Under the Juvenile
Court Law.

B277778
(Los Angeles County
Super. Ct. No. DK18465)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

ERIC D., SR.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County. Robert S. Draper, Judge. Affirmed.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Brian Mahler, Deputy County Counsel, for Plaintiff and Respondent.

In this juvenile dependency case, defendant and appellant Eric D., Sr. (Father) challenges the juvenile court's jurisdictional findings and dispositional orders. In particular, Father argues the juvenile court's jurisdictional finding that he physically abused his seven-year-old son Eric is not supported by substantial evidence and that, once Eric was placed with his mother (Mother), Eric was no longer at risk of future harm. Father also claims that at the disposition hearing, the juvenile court simply should have terminated its jurisdiction and issued a family law order. As discussed below, we conclude substantial evidence supports the juvenile court's findings and orders and, therefore, we affirm.

BACKGROUND

1. Events Preceding Section 300 Petition

On July 12, 2016, the Los Angeles County Department of Children and Family Services (Department) received a child abuse referral. The reporting party explained that, the day before, Father came to school to discuss his son Eric's academic performance. Father was told Eric would have to be retained at his current grade level. The reporting party stated Eric then came to school on July 12 with red marks on his neck and shoulders. When asked about the marks, Eric said Father had

hit him with a belt. Eric said Father used a belt regularly for discipline, but Eric was not afraid to return home after school.

After receiving the referral, a Department social worker interviewed Eric at his school. Eric told the social worker Father was mad at him because he got in trouble at school, was not doing well in school, and would have to repeat his grade level. Eric explained, when he returned home from school with Father the day before, Father took Eric into the bedroom and gave him “a whoopin’ [*sic*] with his belt all over my neck, shoulders and back.” Eric said Father hit him “35 times, he kept hitting me and yelling at me to stay still because I was moving around trying to get away from him and he was grabbing me, hitting me and telling me to stay still.” Eric said no one else was home at the time and, when Mother came home, Father told Eric not to tell her what happened, although Eric tried to tell her. The social worker saw red marks on Eric’s neck and shoulders, as well as some on his left arm. The social worker did not see any other marks.

According to Eric, Mother knew Father disciplined him with a belt and she was “ok with it.” But Eric was not sure if Mother had ever seen any of the marks Father left on him. Although Mother did not discipline Eric with a belt, Eric said “she whoops [*sic*] me with a sandal,” but he could not remember the last time she disciplined him with a sandal. Eric also told the social worker his parents fought when he was in the home. One time, Father tried to throw a fan at Mother, other times, Father hit Mother with a belt, and sometimes they pushed each other. Eric said he was afraid of Father only when Father was mad at him or when he gets in trouble at school and knows he will “get a whoopin [*sic*] when he gets home.”

Toward the end of the interview, when the social worker told Eric she also would be speaking with Father, Eric became visibly upset. He started to tremble, had tears in his eyes, and pleaded with the social worker not to talk to Father. Eric said Father would “give me a whoopin [*sic*] as soon as I get home and it will be so bad. . . . [I]t will be so bad for me, it will be the worse [*sic*] whoopin [*sic*] I get.” Eric said he would feel better going home with Mother.

When Mother came to the school to pick up Eric, she knew why the social worker was there and she was very angry. Mother screamed, yelled, and swore repeatedly at the social worker, saying she wanted to take her child home and would homeschool him from then on. Mother denied Eric was abused and denied Father ever hit him with a belt or that there were any marks on Eric. She said if Eric had any marks on his body, he got them after falling off his skateboard and into a tree. She claimed Father disciplined Eric only by using his hand to spank Eric “on his butt,” and she did the same. Mother denied using any object to discipline Eric or that there was any domestic violence in the home. She said Father did not live with them and she did not know how to contact him. She explained Eric lies a lot and was “[c]learly . . . lying about all of this.”

After speaking with the social worker, Mother demanded Eric be released to her. The social worker explained Mother had to wait because the police were on their way to interview Eric. Mother continued to yell and to swear at the social worker. Eventually, a police officer arrived and interviewed Eric and Mother separately. Mother gave Father’s phone number to the police officer. The officer did not believe Mother’s story that Eric

fell off his skateboard, but believed the marks on Eric's body were more consistent with a belt.

Eric was released to Mother, who took him home. The social worker and police officer also went to Mother's home, which was neat and clean. Mother was much calmer at home, and again stated Father no longer lived there. On the way out, the social worker noticed Eric would not take his eyes off Mother. After Mother closed the front door behind them, the social worker waited outside and almost immediately heard Mother yelling for approximately 30 seconds. After it was quiet for a few minutes, the social worker and police officer left.

The next day the social worker visited paternal grandmother's home. Paternal grandmother and a paternal aunt were there. They both stated Mother, Father, and Eric had visited the night before and had explained what had happened. Neither paternal grandmother nor the paternal aunt were worried about Eric's safety and did not believe Father abused him or disciplined him excessively. Both said Eric was a handful and did not listen, but his parents loved him very much. Paternal grandmother stated her home was Father's home, but she did not know where he slept. She believed he slept at her house and at Mother's house and believed they were spending more time together, trying to work on their relationship.

The social worker also spoke with Eric's teacher, who reported Eric was smart, "not a bad kid at all," and wants to do well. But he was also immature and very inattentive in class. The teacher had told Mother many times that Eric should be assessed, but the teacher did not believe Eric was getting the support he needed. She also explained Mother had already signed the paperwork for Eric to be retained at his current grade

level for another year, but Father seemed surprised by that news when the teacher spoke with him the other day. The teacher also reported Eric told her Father had moved back home, but Eric did not want him there because Father was mean and always used a belt to discipline him. The teacher did not believe Eric was a liar.

The social worker interviewed Father a few days after the incident. Father explained that, when he picked up Eric from school on July 11, Eric's teacher told Father Eric was a constant disruption in class and would have to repeat his current grade level. Before that day, no one had mentioned to Father any concerns with Eric's academic performance. Father said the teacher had never expressed concern with Eric's ability to focus. Father believed Eric "just doesn't like following rules and he knows better."

After speaking with Eric's teacher and on the way back to Mother's home, Father told Eric he "would be giving him a whoopin' [*sic*]." Father explained that, the last time the teacher gave him bad news about Eric's behavior, Father told Eric the next time he got a bad report Eric would get a "whooping [*sic*]." Father said Eric knew it was coming. No one else was home when they arrived. Father said he took Eric into the bedroom and tried to hit Eric's buttocks with a belt. But Eric "was squirming around" so Father held Eric down by his head and neck and put his knee over the back of Eric's legs. Then Father struck Eric on his bottom with a belt. Father told the social worker he was surprised Eric did not have marks on his buttocks after he hit him, stating, "He should've had marks on his butt and honestly, I'm shocked that he doesn't."

Father said that was the only time he "spanked" Eric and he needed to teach Eric a lesson. Father did not believe his

discipline was inappropriate or excessive and was surprised to learn the Department would consider it child abuse. He said when he was a child he “was disciplined worse than that.” Father claimed he had never before struck Eric with a belt or other object. Instead, Father stated he usually disciplined Eric by taking away privileges or sometimes by spanking his bottom with his hand. Father said he and Mother agreed on their methods of discipline and Mother also took privileges away or sometimes hit Eric with a slipper. Father had never seen marks on Eric’s body as a result of either his or Mother’s discipline.

Father reported he lived at paternal grandmother’s home, but recently had been spending more time at Mother’s home so he could “be there for my son.” He said prior to this incident, he was unaware of concerns about Eric’s inability to focus. He stated he would talk to Mother and have Eric assessed. Father told the social worker Eric is loved “so much” and is spoiled. Father felt the incident had been blown out of proportion.

A couple of days after the incident, a doctor examined Eric. The doctor saw the marks on Eric’s neck, shoulder, chest, and arm. She reported that during the examination Mother was very defensive and would not allow the doctor to interview Eric alone. Eric told the doctor he got the marks on his body when he was running and fell into a telephone pole. Mother also stated some of the marks were from a peer scratching Eric’s neck. The doctor reported Eric’s injuries were not consistent with either story, but looked more like grab marks.

On July 19, 2016, on the Department’s application, the superior court issued a removal order authorizing the Department to detain Eric from Father and Mother. The next day, a Department social worker met Eric at his school and took

him to Department offices. Eric reported Mother was mad at him because he “told on” Father, but Eric said he had not been physically disciplined since the July 11 incident. Eric stated he would feel safe living with either his paternal grandmother or his adult sister. The social worker contacted paternal grandmother, who said she was willing to have Eric placed with her. But because a paternal aunt with a criminal history lived with paternal grandmother, the Department was unable to place Eric there. The social worker was unable to reach Eric’s adult sister for possible placement. Thus, Eric was placed with a foster family.

2. Section 300 Petition

On July 25, 2016, the Department filed a petition under Welfare and Institutions Code section 300, subdivisions (a) and (b)¹ on behalf of Eric. The a-1 and b-1 counts were essentially the same. They described the July 11 incident, alleging Father had held Eric down and struck him repeatedly. The a-1 and b-1 counts also alleged Father previously had hit Eric with belts, Eric was afraid of Father, and Mother failed to protect Eric despite knowing Father was physically abusing him. The remaining counts alleged Mother had struck Eric with shoes, Father failed to protect Eric despite knowing Mother was physically abusing him, Mother and Father had a history of violent altercations in Eric’s presence, and Mother and Father had failed to obtain recommended medical services for Eric.

At the detention hearing held the same day, the juvenile court ordered Eric detained and placed in shelter care. Father

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

and Mother were given Department-monitored visits and family reunification services.

Following the detention hearing, but before adjudication, the Department filed two pre-release investigation reports, indicating the Department had considered and researched whether Eric could be placed with either his paternal grandmother, a paternal uncle, or a paternal great-aunt. Although the Department recommended against those placements at the time, the Department indicated placement with paternal grandmother might be viable in the future. On August 15, 2016, the juvenile court ordered Eric placed with a paternal great-aunt.²

3. Adjudication

a. Documentary evidence

On August 22, 2016, in advance of the jurisdiction hearing, the Department filed a jurisdiction and disposition report that summarized interviews conducted since the Department's last report.

In early August, a Department social worker interviewed Eric, who reiterated much of what he had already reported. He again described how, on July 11 because he had misbehaved at school, Father held him down and struck him repeatedly with a belt on both his bottom and his shoulders. Eric told the social worker Father "always hits me with the belt" and sometimes slapped him on the leg, leaving a red mark that would go away. Eric reported being scared of Father when he struck him and that Father hit him a lot "because I don't listen a lot." He said he had

² Although the court's minute orders reference a maternal great-aunt, that appears to be a typographical error.

been getting “whoopings [*sic*]” the entire school year. Eric also said sometimes Mother tried to stop Father from hitting him. Eric told the social worker he had never fallen into a tree or run into a telephone pole, and Mother had told him not to talk to “you guys” or to the police. Eric said he wanted to go home, missed Mother, and thought he would be safe with his parents. He felt responsible for the events that had happened. The social worker reported that during the interview it was very difficult for Eric to sit still or to pay attention. The social worker recommended Eric receive mental health services.

Between July 28, 2016, and August 9, 2016, the social worker tried unsuccessfully to speak with Father about the allegations in the petition. And although the social worker was able to speak with Mother on the phone in late July, the social worker tried unsuccessfully to schedule an interview with Mother to discuss the allegations in the petition.

The social worker also spoke with paternal grandmother and a police officer investigating the case, both of whom reiterated what had already been reported to the Department. The police officer said Mother told him “whooped [*sic*]” meant being hit with a belt on the bottom. The police report from the July 11 incident was attached to the Department’s jurisdiction and disposition report. The police report reflected Eric told the responding officer that Father uses the belt whenever he is disciplined. The police officer also noted the marks on Eric’s body, which appeared to be bruises or blood blisters.

On August 26, 2016, the day of the jurisdiction hearing, the Department filed a last minute information for the court, which included statements Mother had made the day before with respect to the allegations in the petition. Mother said when she

came home the evening of July 11, Father and Eric told her what had happened. But neither of them said anything about a belt. Mother adamantly denied any domestic violence between her and Father, and she said they did not live together. She explained her adult son used to take Eric to school and bring him home in the afternoon. However, her son started a new job and, therefore, Father recently began taking Eric to and from school. Mother stated she believed Eric would benefit from counseling, would follow through with recommendations made by Eric's teacher, and would protect him from Father.

On the basis of Mother's last minute statements and a review of the evidence, the Department reported to the juvenile court the evidence was insufficient to sustain the allegations of the petition other than the a-1 and b-1 allegations. The Department also recommended that Eric be returned to Mother's care.

b. Hearing

The jurisdiction hearing was held August 26, 2016. Mother testified and reiterated what she had told Department social workers during their investigation. She said she did not condone the use of a belt for discipline and did not know Father used that form of discipline until these proceedings began.

At the conclusion of the hearing, the juvenile court stated it believed Eric's description of the July 11 incident. The court found the discipline Father used that day was neither reasonable nor necessary. The court amended the a-1 and b-1 counts slightly and sustained those counts as amended.³ The court dismissed

³ For present purposes, the amendments to the petition are not relevant.

the remaining counts and found Eric to be a person described by section 300. Although it is not reflected in the reporter's transcript, the minute order from the jurisdiction hearing states the juvenile court ordered Eric released to Mother pending the disposition hearing.

4. Disposition and Appeal

The disposition hearing was held the next week on September 1, 2016. That day, the Department submitted a last minute information for the court. The Department reported Mother's rent had been raised and she could no longer afford to stay in her apartment. Thus, she had moved out of her apartment and was staying at a motel with Eric. Mother reported, however, her adult son had found an apartment for them and would be getting the keys in a few days. Mother also stated she planned to have her adult daughter care for Eric before and after school when Mother was working.

At the hearing, the juvenile court ordered Eric detained from Father and placed with Mother under the Department's supervision. Both parents were given family maintenance services.

That same day, Father appealed the juvenile court's jurisdictional findings and dispositional orders.

5. Termination of Jurisdiction

On June 23, 2017, we granted the Department's request to take judicial notice of the juvenile court's February 9, 2017 minute order, which reflects that, on February 9, 2017, the juvenile court terminated its jurisdiction over this case and ordered Eric released to Mother. Based on the juvenile court's February 9 orders, the Department filed a motion to dismiss the appeal as moot, which motion we denied.

DISCUSSION

Father argues there was insufficient evidence to support the juvenile court's jurisdictional findings against him and, at the least, the juvenile court should have terminated its jurisdiction over the case at the disposition hearing. As discussed below, we disagree.

1. Standard of Review

We review the juvenile court's findings and orders to determine whether they are supported by substantial evidence. (*In re Jonathan B.* (2015) 235 Cal.App.4th 115, 119.) We will affirm if there is reasonable, credible evidence of solid value to support the court's findings. (*Ibid.*) "In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) "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.)

2. Applicable Law

The juvenile court declared Eric a dependent of the court under section 300, subdivisions (a) and (b). Subdivision (a) provides the juvenile court may declare a child a dependent of the court if "[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." Subdivision (b) provides the juvenile court may declare a child a

dependent of the court if “[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, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left.”

“A parent’s ‘[p]ast conduct may be probative of current conditions’ if there is reason to believe that the conduct will continue.’ ” (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.) Similarly, a parent’s failure to take responsibility for, or to recognize the negative effects of, his or her conduct is relevant to the court’s consideration of risk under section 300. “‘[D]enial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision.’ ” (*In re A.F.* (2016) 3 Cal.App.5th 283, 293.) “One cannot correct a problem one fails to acknowledge.” (*In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197.)

3. Substantial evidence supports the juvenile court’s jurisdictional findings.

Father argues substantial evidence does not support the juvenile court’s jurisdictional findings. We disagree and conclude substantial evidence supports findings that Father nonaccidentally inflicted serious physical harm on Eric and placed Eric at substantial risk of suffering such harm.

Although parents may discipline their children and administer punishment, those rights are not without limits. “Whether a parent’s use of discipline on a particular occasion falls within (or instead exceeds) the scope of [the] parental right to discipline turns on three considerations: (1) whether the

parent's conduct is genuinely disciplinary; (2) whether the punishment is 'necess[ary]' (that is, whether the discipline was 'warranted by the circumstances'); and (3) 'whether the amount of punishment was reasonable or excessive.' ” (*In re D.M.* (2015) 242 Cal.App.4th 634, 641.) Here, although Father's conduct appears to have been disciplinary in nature, and assuming it was warranted, we nonetheless conclude substantial evidence supports the juvenile court's finding that the discipline was excessive. The evidence showed Father intentionally and forcibly grabbed Eric by the neck, used his knee to pin Eric down, and repeatedly struck Eric with a belt on his buttocks and back. Father's actions left Eric with multiple noticeable marks on his neck, shoulder, chest, and arm that remained visible for days. Indeed, Father himself was surprised Eric did not have more marks on his body as a result of the beating. In addition, Eric consistently stated Father regularly used a belt to discipline him⁴ and Eric was scared of Father. Our conclusion is supported by other cases involving similarly excessive discipline. (E.g., *In re David H.* (2008) 165 Cal.App.4th 1626, 1645; *In re Mariah T.* (2008) 159 Cal.App.4th 428, 438–439.)

Father relies on *In re D.M.*, *supra*, 242 Cal.App.4th 634 and *In re Isabella F.* (2014) 226 Cal.App.4th 128 for his claim that, although his discipline on July 11 was in poor judgment, it was not excessive and did not amount to physical abuse. Those cases

⁴ In contrast to Eric's statements, Father claimed this was the first time he used a belt or any object to discipline Eric. However, issues of fact and credibility are the province of the trial court and we do not reweigh the evidence on appeal. (See *In re Heather A.*, *supra*, 52 Cal.App.4th at p. 193; *In re Matthew S.*, *supra*, 201 Cal.App.3d at p. 321.)

are easily distinguished. In *In re D.M.*, on “rare” occasions the mother spanked her children on their buttocks with her bare hand or a sandal. Her spankings left no marks on the children and did not hurt much. (242 Cal.App.4th at pp. 637–638.) In *In re Isabella F.*, on one occasion the mother unintentionally caused fingernail injuries to her daughter’s face while the mother and daughter were struggling with each other. (226 Cal.App.4th at pp. 131–132.) In contrast here, the evidence revealed Father consistently used a belt to discipline Eric and, on the date in question, Father repeatedly and excessively struck Eric with a belt, leaving multiple marks on Eric’s body that were visible for days.

In addition, Father did not consider the July 11 incident to be excessive or otherwise inappropriate. He expressed surprise when the Department social worker told him it could be considered abuse and indicated that when he was a child he had been disciplined more severely. Father’s failure to recognize the negative effects of his conduct is relevant to the court’s consideration of risk under section 300. “[D]enial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision.” (*In re A.F.*, *supra*, 3 Cal.App.5th at p. 293; see *In re Gabriel K.*, *supra*, 203 Cal.App.4th at p. 197.) Thus, we conclude substantial evidence supports a finding that Eric was at risk of suffering serious physical harm in the future.

Finally, Father argues that because at the jurisdiction hearing the juvenile court placed Eric with Mother, the court eliminated the need to take jurisdiction over Eric. Specifically, Father claims once Eric was placed with Mother, Eric was no longer at risk of harm because Mother had a new apartment and

her adult daughter would provide childcare instead of Father. In making this argument, however, Father relies on the September 1 report which was not before the juvenile court at the August 26 jurisdiction hearing, misstates the contents of that report, and incorrectly states the juvenile court dismissed all allegations against Mother. Contrary to Father's claims on appeal, at the jurisdiction hearing the juvenile court did not have before it information that Mother had a new home and new plan for Eric's care. Instead, at the jurisdiction hearing the juvenile court had before it the facts already discussed above, based on which the court properly sustained the a-1 and b-1 counts of the petition, which included allegations against Father and Mother. Accordingly, we are not persuaded by Father's argument and conclude that, at the time of the jurisdiction hearing, substantial evidence supported the juvenile court's findings.

4. Substantial evidence supports the juvenile court's dispositional orders and continuation of jurisdiction.

Father argues that, at the disposition hearing, the juvenile court should have terminated its jurisdiction over this case and issued a family law order under section 362.4, which section permits the juvenile court to issue custody and visitation orders upon termination of dependency jurisdiction. Father bases this argument on his claim that Eric was safely placed with Mother and, therefore, no further court supervision was warranted.

As an initial matter, Father did not ask the juvenile court to terminate its jurisdiction at the disposition hearing. Thus, because he failed to raise it below, Father has waived his section 362.4 argument on appeal. (*In re Christopher B.* (1996) 43 Cal.App.4th 551, 558.) Even if Father had not waived the argument, however, we would conclude substantial evidence

supports the juvenile court's dispositional orders. At the time of the disposition hearing, the court had before it the September 1 report, which indicated Mother was *planning* both to move to a new apartment and to have her adult daughter help care for Eric instead of Father. However, those things had not yet happened. Indeed, the report stated Mother and Eric were currently staying at a motel and that previously Father and Mother had visited Eric together, which at the time was not an approved form of monitored visitation. Thus, substantial evidence supported the juvenile court's decision to continue its jurisdiction and make dispositional orders.

DISPOSITION

The findings and orders are affirmed.

NOT TO BE PUBLISHED.

LUI, J.

We concur:

CHANEY, Acting P. J.

JOHNSON, J.