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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re N.B., a Person Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.V.,

Defendant and Appellant.

B287648

(Los Angeles County
Super. Ct. No. 17CCJP01879B)

APPEAL from an order of the Superior Court of Los
Angeles County, Kim L. Nguyen, Judge. Affirmed.

Gina Zaragoza, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,

Assistant County Counsel, and Kim Nemoy, Deputy County Counsel, for Plaintiff and Respondent.

The juvenile court assumed jurisdiction over a two-year-old boy based on his father's sexual abuse of the boy's stepsister. On appeal, the father argues no evidence suggested his sexual abuse of his stepdaughter indicated his son was at risk of harm. We affirm.

BACKGROUND

The family in this case consists of L.V. (mother), M.V. (father), N.B., their two-year-old son, R.B., mother's 17-year-old daughter from a prior relationship, and M.V., Jr., father's 14-year-old son from a prior relationship.

In 2008, when mother and father were dating, father took then eight-year-old R.B. to a room upstairs in his home and turned the lights off, scaring her, and said he would turn them back on only if she kissed him on the lips. She refused and returned downstairs in the dark. Father made repeated similar advances over the ensuing years. When R.B. was nine years old he told her during a game of hide and seek that if he found where she was hiding she would have to allow him to touch her underwear and bra. When he did find her, she showed him her undergarments. When R.B. was 11 years old, father began hugging her inappropriately, biting her arms, slapping her thighs and buttocks, and telling her she was a beautiful woman with a beautiful body and lips. In 2015, father told R.B. he was in love with her and only stayed with mother to be near R.B. In 2017, father came to R.B.'s bedroom and flicked the lights off and on and tried to kiss her. When R.B. moved away and yelled at him, he called her a "fucken bitch."

In 2010, father plied mother's 14-year-old niece with alcoholic drinks until she passed out. When she awoke, she found herself naked in a bedroom with father, also naked, on top of her. She felt pain in her vagina. Father told the niece that she was beautiful and he liked her, and kissed her on the mouth, breasts and vagina and ordered her to hug and kiss him. She ran to a bathroom, locked herself in and screamed for help and threw bottles of shampoo out the window. When father removed the bathroom door lock she ran outside.

In 2013, father punched mother in the face with a closed fist in front of R.B. and a friend, both of whom intervened to protect Mother. In 2015, father pushed mother, then pregnant with N.B., into some televisions, forcing R.B. to step in to protect her.

The Los Angeles County Department of Children and Family Services (DCFS or the department) received a referral after the 2017 incident where father tried to kiss R.B. R.B. reported that father would sometimes become physically violent toward mother.

A vice principal at R.B.'s high school reported that R.B. had written a report documenting father's sexual abuse and the guilt she felt for not telling mother.

Mother reported that her niece had told her in 2010 that father sexually abused her. She said that father treated R.B. like a daughter, and she never thought he would harm R.B. Mother also reported that she had discovered text messages in which father professed his love for another 15-year-old niece and told her he could get her residency status in the United States. Mother reported that father would hit M.V., Jr., with a belt and other objects, leaving bruises, and she would intervene to protect

M.V., Jr. DCFS initiated a separate dependency action on behalf of M.V., Jr., who was declared a dependent of the court. That case is not part of this appeal.

In November 2017, DCFS filed a Welfare and Institutions Code section 300¹ petition on behalf of R.B. and N.B.

The juvenile court dismissed the action as to R.B. because she would soon be 18 years old, but found N.B. to be at risk of harm based on father's domestic violence and his abuse of R.B. The court found that father had a history of violence toward mother, and had sexually abused R.B. on many occasions beginning in 2010, both of which put N.B. at risk of serious physical harm. The court sustained the petition, declared N.B. a dependent under section 300, subdivisions (b), (d), and (j), and ordered that N.B. be placed in mother's custody and removed from father's custody, that DCFS provide reunification services, and that father's visits be monitored.

Father appealed.

DISCUSSION

Father contends no substantial evidence supported the juvenile court's finding that his sexual abuse of R.B. put N.B. at substantial risk of serious physical harm, especially given that N.B. is a young boy and there was no evidence that father had a sexual interest in either of his sons.

Standard of Review

We review the juvenile court's jurisdiction findings and disposition order for substantial evidence. (*In re R.C.* (2012) 210 Cal.App.4th 930, 940.) Under this standard of review, the power

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

of an appellate court tasked with assessing the sufficiency of the evidence begins and ends with a determination as to whether substantial evidence, whether or not contradicted, supports the conclusion of the trier of fact. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378-1379.) All evidentiary conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the decision, if possible. We may not reweigh or express an independent judgment on the evidence. (*In re Laura F.* (1983) 33 Cal.3d 826, 833.) In this regard, issues of fact and credibility are matters for the trial court alone. (*In re Amy M.* (1991) 232 Cal.App.3d 849, 859-860.)

Applicable Statutes

Under section 300, subdivision (b)(1), a juvenile court may assume jurisdiction over a child 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.” The court “‘need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.’” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) “‘The purpose of dependency proceedings is to prevent risk, not ignore it.’” (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1104.)

Under section 300, subdivision (d), a juvenile court may assume jurisdiction over a child who has been sexually abused or is at substantial risk of sexual abuse, as defined in section 11165.1 of the Penal Code. Penal Code section 11165.1 includes acts involving the touching of a child done for the purposes of sexual gratification, as well as acts described by Penal Code section 647.6. (Pen. Code, § 11165.1, subd. (a).) Penal Code

section 647.6 makes it illegal to “annoy or molest” a child, and typically has been applied to incidents of explicit sexual conduct. (*People v. Kongs* (1994) 30 Cal.App.4th 1741, 1750.) However, the statute does not require physical contact. Rather, conduct that is objectively annoying and motivated by an abnormal sexual purpose can suffice. (See *ibid.*; *In re D.G.* (2012) 208 Cal.App.4th 1562, 1572; *People v. Thompson* (1988) 206 Cal.App.3d 459, 464; *People v. Carskaddon* (1959) 170 Cal.App.2d 45, 46 [predecessor statute violated when defendant asked 17-year-old whether she had engaged in certain sex acts].)

In other words, to fall within subdivision (d) of section 300, the purported act of sexual abuse need not include an offensive touching. “The law is well settled that there need not be an actual contact by a defendant with any part of the body of the victim in order for a defendant’s acts to constitute the crime of an annoyance or a molestation of a child under 18 as required by [Penal Code] section 647a [the predecessor to Penal Code section 647.6]. Words alone may constitute the annoyance or molestation proscribed by Penal Code section 647a. ‘[The] touching of the body is not necessarily required.’” (*People v. La Fontaine, supra*, 79 Cal.App.3d at p. 185 [at no time did the defendant touch or make any movement toward the minor’s body]; *People v. Lopez* (1998) 19 Cal.4th 282, 289 [“In contrast to section 288, subdivision (a), section 647.6, subdivision (a), does not require a touching”]; *People v. Memro* (1995) 11 Cal.4th 786, 871 [same], abrogated on another ground as stated in *People v. McKinnon* (2011) 52 Cal.4th 610, 639, fn. 18; *People v. Levesque* (1995) 35 Cal.App.4th 530, 539.)

Under section 300, subdivision (j), a juvenile court may assume jurisdiction over a child where the child’s sibling was

abused or neglected and there is a substantial risk the child will be abused or neglected as well. Thus, subdivision (j) has two prongs: (1) that “[t]he child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e) or (i)”;

and (2) that “there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions.” (*In re Rubisela E.* (2000) 85 Cal.App.4th 177, 197, disapproved on another ground by *In re I.J.*, *supra*, 56 Cal.4th 766.) When contemplating subdivision (j) jurisdiction, a juvenile court considers: “the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.” (§ 300, subd. (j).) Thus, subdivision (j) allows the court to take into consideration factors that might not be determinative if the court were adjudicating a petition filed directly under subdivision (a), (b), (d), (e) or (i). (See *In re I.J.*, at p. 774.)

Application

Father does not challenge the juvenile court’s domestic violence findings or its findings regarding his sexual abuse of R.B., and acknowledges that the court will continue to have jurisdiction over N.B. whether or not we review the juvenile court’s finding that N.B. was in danger of sexual abuse. We nevertheless reach the merits of father’s appeal because the court’s finding could potentially be prejudicial to him or impact current or future dependency proceedings, or could have other consequences for the father beyond jurisdiction. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.)

In re I.J. is instructive. There, the Supreme Court held that evidence of a father's sexual abuse of his 14-year-old daughter could justify the assertion of jurisdiction over his other children, including those who were younger and of the opposite gender. *In re I.J.* explained that section 300, subdivision (j), expanded the juvenile court's exercise of jurisdiction with regard to children whose siblings have been abused as defined by section 300, subdivisions (a), (b), (d), (e) or (i). Noting subdivision (j)'s broad language, the Court stated that " 'the trial court is to consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm, within the meaning of *any* of the subdivisions enumerated in subdivision (j). The provision thus accords the trial court greater latitude to exercise jurisdiction as to a child whose sibling has been found to have been abused than the court would have in the absence of that circumstance.' " (*In re I.J.*, at p. 774.)

To determine whether the risk is substantial, "the court must consider both the likelihood that harm will occur and the magnitude of potential harm." (*In re I.J.*, *supra*, 56 Cal.4th at p. 778.) "[T]he more severe the type of sibling abuse, the lower the required probability of the child's experiencing such abuse to conclude the child is at a substantial risk of abuse or neglect under section 300. If the sibling abuse is relatively minor, the court might reasonably find insubstantial a risk the child will be similarly abused; but as the abuse becomes more serious, it becomes more necessary to protect the child from even a relatively low probability of that abuse." (*Ibid.*)

Here, the first prong of a finding of jurisdiction under subdivision (j) is satisfied because the juvenile court found that

R.B. had been abused pursuant to section 300, subdivision (d). Substantial evidence likewise supported the second prong—that there is a substantial risk N.B. will be abused by father, especially given that “sexual or other serious physical abuse of a child by an adult constitutes a fundamental betrayal of the appropriate relationship between the generations.” (*In re Kieshia E.* (1993) 6 Cal.4th 68, 76-77.) “When a parent abuses his or her child . . . the parent also abandons and contravenes the parental role. Such misparenting is among the specific compelling circumstances which may justify state intervention, including an interruption of parental custody.” (*Id.* at p. 77.)

N.B.’s gender is not a dispositive factor. Indeed, where the parent’s behavior is so aberrant and egregious, there may be a substantial risk to the child regardless of gender. *In re I.J.* analyzed the threat to a boy where his older sister had been sexually abused. The Supreme Court explained that “[a]lthough the danger of sexual abuse of a female sibling in such a situation may be greater than the danger of sexual abuse of a male sibling, the danger of sexual abuse to the male sibling is nonetheless still substantial.” [Citation.] The juvenile court need not compare relative risks to assume jurisdiction over all the children of a sexual abuser.” (*In re I.J., supra*, 56 Cal.4th at p. 780.) Nor does N.B.’s comparative youth eliminate the substantial risk to him created by father’s history of sexual abuse. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 968, fn. omitted [“sexual abuse of one child may constitute substantial evidence of a risk to another child in the household—even to a sibling of a different sex or age or to a half sibling”].) Indeed, N.B.’s youth makes him more vulnerable and defenseless to such abuse. The magnitude of the harm in this

situation is so great that the risk to N.B. is substantial, even if the probability of a sexual assault might be low. (*In re I.J.*, at p. 778 [“the more egregious the abuse, the more appropriate for the juvenile court to assume jurisdiction over the siblings”].)

It is well settled that section 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction, and instead requires only a substantial risk of abuse. In this case, the juvenile court effectively concluded that the risk of sexual abuse to a child whose opposite gender sibling had been sexually abused was not “nonexistent or so insubstantial that the juvenile court may not take steps to protect the [child] from that risk.” (*In re I.J.*, *supra*, 56 Cal.4th at p. 779.) Given that “a father’s prolonged and egregious sexual abuse of his own child may provide substantial evidence to support a finding that all his children are juvenile court dependents” (*id.* at p. 770), we hold that the juvenile court’s conclusion was supported by substantial evidence.² As *In re I.J.*

² *In re I.J.* recognized a split of authority in lower appellate courts as to whether the sexual abuse of a daughter can warrant dependency jurisdiction over a son under subdivisions (b) and (d). (See *In re I.J.*, *supra*, 56 Cal.4th at pp. 775-779.) As noted by *In re I.J.*, cases upholding jurisdiction under these circumstances have involved abhorrent acts of sexual abuse, such as incestuous rape, or were cases where the subject child was nearing the age of the abused sibling. (*Ibid.*) Here, it is undisputed that father did not rape R.B. and that she is not his biological child. However, father began making sexual advances toward R.B. when she was just eight years old. Furthermore, father’s sexual advances toward R.B. lasted nearly a decade and he drugged, molested, and possibly raped a 14-year-old niece as well. Sustained, egregious abuse is but one factor in determining if a sibling is at

explained “ ‘[s]ome risks may be substantial even if they carry a low degree of probability because the magnitude of the harm is potentially great.’ ” (*Id.* at p. 778.) That is what we have here. It may be that there is a low probability that father would molest N.B., but it is possible, because a person who would molest his eight-year-old stepdaughter and 14-year-old niece harbors unnatural and unchecked impulses. Because the magnitude of harm would be great if another minor were molested, the risk is substantial. Thus, the juvenile court’s exercise of jurisdiction was appropriate.

DISPOSITION

The juvenile court order is affirmed.

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CHANNEY, Acting P. J.

We concur:

BENDIX, J.

CURREY, J.*

risk for abuse. Moreover, nothing in *In re I.J.* suggests that juvenile courts are to apply a different analysis simply because the abused sibling is not the abuser’s biological child.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.