Filed 9/15/17 In re M.H. CA2/3

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

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| In re M.H., a Person Coming Under the Juvenile Court Law. | B280541 |
| LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>D.B.,<br><br>Defendant and Appellant. | (Los Angeles County Super. Ct. No. CK70879) |

APPEAL from an order of the Superior Court of Los Angeles County, Natalie Stone, Judge. Affirmed.

Morgan D. Ross, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel and Steven D. Watson, Deputy County Counsel for Plaintiff and Respondent.

Defendant and appellant D.B. (mother) appeals a dispositional order of the juvenile court. She specifically challenges the juvenile court's jurisdictional finding that her daughter (M.H.) (the minor) (born August 2016) is a dependent child of the court pursuant to Welfare and Institutions Code section 300, subdivision (a).[1] [2]

The true finding under section 300, subdivision (a), is based on the parents' engaging in domestic violence while mother held the infant minor in her arms. Although the minor was not physically injured in that incident, this conduct placed minor at substantial risk of suffering serious physical harm. Therefore, we reject mother's challenge to the sufficiency of the evidence to support the true finding under section 300, subdivision (a), and affirm the order.

**FACTUAL AND PROCEDURAL BACKGROUND**

On November 20, 2016, when the minor was three months old, the Los Angeles County Department of Children and Family Services (DCFS) received a referral that mother and father had been arrested for domestic violence after a verbal argument became physical. DCFS's subsequent investigation revealed that the parents were engaged in a violent altercation in which they struck and pushed one another while mother held the minor in her arms. Father grabbed the minor from mother, reportedly resulting in mother being pushed to the ground.

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[1] All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

[2] Jurisdictional findings are reviewable on an appeal from the dispositional order (*In re M.C.* (2011) 199 Cal.App.4th 784, 801), which is what we have here.

On November 23, 2016, DCFS filed a juvenile dependency petition. As subsequently amended, the petition alleged as follows:

(a-1, b-1): On November 20, 2016, mother and father (G.H.) (not a party to this appeal) engaged in a violent altercation in which they struck and pushed one another while mother held the minor. Father grabbed the minor from mother, resulting in mother being pushed to the ground. Father has been convicted of assault with a deadly weapon. The violent conduct between mother and father places the minor at risk of serious physical harm.

(b-2): Mother has a history of substance abuse and is a current abuser of illicit drugs, which renders mother incapable of providing regular care of the minor. On a prior occasion, mother was under the influence of illicit drugs while the minor was in her care. Father failed to protect the minor from mother's drug use, of which he knew or reasonably should have known. Mother's substance abuse and father's failure to protect the minor placed the child at risk of serious physical harm.

On November 23, 2016, the juvenile court ordered the minor detained with the paternal grandmother, and granted the parents monitored visits.

On January 30, 2017, the juvenile court conducted the jurisdictional and dispositional hearing. The court sustained the petition, declared the minor a dependent pursuant to section 300, subdivisions (a) and (b), removed her from parental custody, granted the parents monitored visits, and ordered reunification services. Mother was ordered to participate in a drug treatment program, parenting classes, and individual counseling. The trial court stated, "Just by way of explanation, I sustained the (a)

count because the child was held at the time and easily could have been injured during the struggle between the parents."

Mother filed a timely notice of appeal.

## CONTENTIONS

Mother contends: her notice of appeal should be liberally construed to include a review of the section 300, subdivision (a) allegation; the justiciability doctrine should not foreclose review of the section 300, subdivision (a) finding even though mother is not challenging the other findings; and substantial evidence did not support the juvenile court's true finding under section 300, subdivision (a), under a plain reading of the statute because the minor did not suffer any physical harm.

## DISCUSSION

1. *Procedural issues*.

a. *Notice of appeal liberally construed to afford appellate review of the jurisdictional finding under section 300, subdivision (a).*

With respect to the findings and orders being appealed, mother's notice of appeal specified the following: "On 1/30/17, the Judge sustained the B-2 allegation." On appeal, however, mother is not challenging either the b-1 (domestic violence) or b-2 (substance abuse) allegations. Instead, mother confines her argument to the a-1 allegation involving domestic violence.

Mother contends that although her notice of appeal specified the b-2 allegation, this court should liberally construe the notice to enable appellate review of the jurisdictional issues in their entirety. We agree.

We are guided by California Rules of Court, rule 8.100(a)(2), which states: "The notice of appeal must be liberally construed. The notice is sufficient *if it identifies the particular*

*judgment or order being appealed*." (Italics added.) Here, the notice of appeal duly identified the January 30, 2017 order. Further, the notice of appeal was not required to specify the particular findings in that order that mother would be challenging on appeal.

Moreover, "[n]otices of appeal are to be liberally construed so as to protect the right of appeal if it is reasonably clear what appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced." (*Luz v. Lopes* (1960) 55 Cal.2d 54, 59.) Here, it is reasonably clear from the notice of appeal that mother was appealing the jurisdictional/dispositional order of January 30, 2017, and DCFS could not possibly have been misled or prejudiced by the notice's unnecessary specification of the juvenile court's finding on the b-2 allegation.

b. *The true finding on the a-1 count is nonjusticiable because mother does not challenge the true finding on the b-1 count, which was based on the identical conduct.*

Next, mother argues that although she is solely challenging the juvenile court's finding on the a-1 count, the justiciability doctrine should not foreclose review of that count. We disagree.

Pursuant to the doctrine of justiciability, " ' "[a] judicial tribunal ordinarily may consider and determine only an existing controversy, and not a moot question or abstract proposition." ' " (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1490.) Application of the doctrine of justiciability in the dependency context leads to the conclusion that "[w]hen 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.)

Here, mother has solely challenged the true finding on the a-1 count; she does not attack the true finding on the b-1 count, which was based on the *identical* conduct, or the true finding on the b-2 count. Thus, even if the a-1 count were reversed, the true findings on the b-1 and b-2 counts, and hence dependency court jurisdiction, would remain.

Mother contends we nonetheless should address the sufficiency of the evidence to support the a-1 count because it subjects her to inclusion in the Child Abuse Central Index (CACI) pursuant to the Child Abuse and Neglect Reporting Act. (Pen. Code, § 11164 et seq.; see generally, *Gonzalez v. Santa Clara County Department of Social Services* (2014) 223 Cal.App.4th 72, 84–85.) However, mother has not shown that the b-1 count, *based on the same conduct*, does not have the same reporting consequence. Accordingly, mother is not aggrieved by the true finding on the a-1 count, and thus we need not address the sufficiency of the evidence to support it.

2. *No merit to mother's challenge to the sufficiency of the evidence to support the jurisdictional finding under section 300, subdivision (a).*

However, even assuming mother's challenge to the a-1 count is properly before this court, as discussed below, her contention is meritless.

a. *Standard of appellate review*.

"When the sufficiency of the evidence to support a juvenile court's finding or order is challenged on appeal, the reviewing court must determine if there is substantial evidence, contradicted or uncontradicted, that supports it. [Citations.]" (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216; accord, *In re David M.* (2005) 134 Cal.App.4th 822, 828 [jurisdictional findings are reviewed for substantial evidence].)

b. *Evidence of actual physical harm was not required for jurisdictional finding under section 300, subdivision (a).*

Mother contends substantial evidence does not support the true finding under section 300, subdivision (a), because the minor did not suffer any physical harm.

Section 300, subdivision (a), provides for jurisdiction where "[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. For purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on [(1)] the manner in which a less serious injury was inflicted, [(2)] *a history of repeated inflictions of injuries on the child or the child's siblings*, or [(3)] 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), italics added.)

Mother focuses narrowly on the second sentence of subdivision (a) [including a history of repeated infliction of injury on the child or the child's siblings] and contends that under a "plain reading" of the statute, there must be a physical injury to the child at some point in time for a true finding under this subdivision. The argument is meritless.

*In re Marquis H.* (2013) 212 Cal.App.4th 718 (*Marquis H.*) is instructive. There, the juvenile court assumed jurisdiction over Marquis, *who was not physically abused*, based on the parents' serious abuse of two of their grandchildren. (*Id.* at p. 720.) The parents asserted that because the grandchildren were not Marquis's siblings, the statute was inapplicable and could not serve as a basis of jurisdiction. (*Id.* at p. 725.) The parents claimed that under the plain language of section 300, subdivision (a), there are only three scenarios under which the court may exercise jurisdiction: "those expressly spelled out in the second sentence of the statute." (*Marquis H.*, *supra*, at p. 725.) *Marquis H.* rejected the argument, stating: "We do not read section 300, subdivision (a), as prohibiting the exercise of jurisdiction in situations other than those specified in the second sentence of the statute. *In our view, the permissive language of the second sentence merely sets forth scenarios in which the statute may apply*. As the Agency points out, 'the Legislature could not be expected to foresee and codify every mode of physical abuse which may place a child at substantive risk of physical harm by an abusive parent.' " (*Id.* at p. 725, italics added.)

Thus, *Marquis H.* found that the juvenile court properly concluded that the child was at risk of physical harm within the meaning of section 300, subdivision (a), based on the parents' physical abuse of other children in their care who were not the child's siblings. (*Marquis H.*, *supra*, 212 Cal.App.4th at pp. 724–727.)

Here, the minor's exposure to the domestic violence between mother and father placed her at substantial risk of suffering serious physical harm, as the parents were engaged in a

physical altercation while mother held the infant minor in her arms. Actual physical injury to the minor was not required.

This case is analogous to *In re M.M.* (2015) 240 Cal.App.4th 703, where the domestic violence was not directed at the child, but the parents' altercation subjected the child to the defined risk of harm. (*Id*. at pp. 719–720.) There, the record "show[ed] that minor not only was present during the December 2 domestic violence incident between mother and father, but that he was 'at their feet' during most of the incident and that during some of the incident, father was actually holding minor while mother was hitting father and while father was choking mother." (*Ibid*.) The reviewing court concluded there was sufficient evidence in the record to support the juvenile court's finding there was a substantial risk minor would suffer serious physical harm inflicted nonaccidentally by mother or father. (*Ibid*.)

In view of the above, we conclude the juvenile court properly assumed jurisdiction based on the parents' engaging in domestic violence, while mother held the infant minor, which placed the minor at substantial risk of suffering serious physical harm.

## DISPOSITION

The January 30, 2017 order is affirmed.

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EDMON, P. J.

We concur:

LAVIN, J.

BACHNER, J.*

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