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

In re CHRISTIAN O., a Person Coming
Under the Juvenile Court Law.

B239537

(Los Angeles County
Super. Ct. No. CK89514)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JESSICA O.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Stephen Marpet, Juvenile Court Referee. Affirmed.

Matthew I. Thue, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Stephen D. Watson, Associate Deputy County Counsel for Plaintiff and Respondent.

Jessica O. appeals the juvenile court's jurisdictional findings pertaining to her son, Christian O., under Welfare and Institutions Code¹ section 300. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Eleven-month-old Christian O. came to the attention of the Department of Children and Family Services in July 2011 when someone reported that his mother and her boyfriend were smoking marijuana and sniffing paint in front of him. Jessica O. denied smoking marijuana in Christian O.'s presence and denied sniffing paint entirely. She reported that she had enrolled in a program called "The Whole Child" and she could not use any drugs at all. The boyfriend, Israel G., admitted "a lot of issues," extensive drug use, mental health conditions, and a conviction for making criminal threats.

DCFS advised Jessica O. that Israel G.'s mental health issues, drug use, and criminal record made him unpredictable and dangerous. DCFS did not seek court intervention because Jessica O. emphasized that she would not allow Israel G. access to her home or child. Her program offered parenting education, individual counseling, and drug testing. Jessica O. missed two drug tests in early August 2011.

Later in August, Israel G. beat mother until she was semi-conscious while Christian O. was present. The altercation awakened and frightened Christian O., causing him to cry. Jessica O. denied to emergency responders that the incident occurred despite having multiple contusions all over her body. She did not want an emergency protective order and did not seek a restraining order.

Jessica O.'s caseworker at The Whole Child informed DCFS that Jessica O. had disclosed "very concerning mental health issues regarding" Israel G. Christian O.'s maternal grandfather reported that Christian O. had visible injuries to his lip and head. DCFS found Jessica O.'s apartment to be unclean; Christian O. was eating chip crumbs from the floor. There were three teenaged girls in the apartment, and Christian O. had

¹ Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

been left with a neighbor whose name Jessica O. did not know. Christian O. was found in a room with a pit bull. He was wearing only a dirty diaper. DCFS observed two small barely visible, small bruises on Christian O.'s face and a tiny prick on his lip, with no bruising, and concluded that he did not have the injuries reported by the maternal grandfather.

Jessica O. claimed not to know how Christian O. got his bruises. She said she was upstairs with her neighbor in case Israel G. came back. She reported that Israel G. had broken her phone but that he was trying to reach her through his cousin, one of the girls in the apartment. Jessica O. said that Israel G. had not come around but that he was texting her. She said she had told him that she had made a police report and that he believed she had obtained a restraining order although she had not. When asked why she had not sought a restraining order, she said she did not know and that she did not think he would come around.

DCFS held a team decision meeting to address Christian O.'s safety. DCFS was concerned that Israel G. lived only a few blocks away, that Jessica O.'s apartment building was unlocked and freely accessible, that she had not obtained a restraining order, and that she had no landline telephone. Jessica O. agreed to a voluntary family maintenance agreement with DCFS and was advised that as part of the agreement she could have no further contact with Israel G. She would also have to move from the unsecured apartment; DCFS offered that she could move to a domestic violence shelter or live with her father. Jessica O. expressed reluctance to leave her apartment and asked if Christian O. could be placed with her aunt; DCFS explained that this would mean that he would have to be detained, and that if he were detained, he would not be placed with the aunt due to the extreme proximity of Israel G.'s apartment to the aunt's residence. DCFS reported that "[i]t took a long time for mother to accept a Voluntary case rather than court involvement," but that she ultimately agreed to have no contact with Israel G., to obtain a restraining order against him, to continue services with The Whole Child, and to undergo drug and alcohol testing.

The following day, the maternal grandfather reported that Jessica O. had been in continuous contact with Israel G. and that she had shown him a text message from Israel G. stating that he was sorry. Jessica O. denied the allegation and accused her father of lying. Jessica O. asked again that Christian O. go to her aunt. DCFS responded that he could not be placed with the aunt because Israel G. lived only a few houses away. “But she has a restraining order against him, his mother has a restraining order too, the whole block has a restraining order, he isn’t even aggressive, I’m more aggressive than he is,” said Jessica O. She denied that Israel G. had hit her in the past and admitted that she had hit him.

DCFS asked Jessica O. to pack her belongings and refused her request to leave and return later for her and the baby. The social worker expressed discomfort at Jessica O.’s aggression toward her father, and Jessica O. accused her father of hitting her repeatedly. The maternal grandfather told DCFS that he could not take them in and that they would have to go to a shelter.

DCFS found a shelter for Jessica O. and Christian O. Jessica O. hesitated to go to a shelter and asked again for the child to be placed with her aunt. DCFS explained that if Jessica O. did not accept the shelter housing that Christian O. would be detained and placed in a foster home because Jessica O. “had violated the safety plan for child Christian O. by continuing to have contact with perpetrator and placing Christian O. in immediate risk of physical harm and emotional abuse.” Jessica O. and Christian O. went to the shelter.

DCFS filed a petition in late August 2011 alleging that Christian O. fell within the jurisdiction of the juvenile court under section 300, subdivisions (a) and (b). DCFS reported to the court that there was evidence that Jessica O. was likely to flee: When the social worker asked Jessica O. why she had wanted the worker to leave and return later to take her to the shelter, she had explained that she had planned to leave for Arizona. DCFS reported that although services had been provided to attempt to prevent removal from the home, Jessica O. had not been following her housing rules; was being asked by the landlord to leave; had not been undergoing drug testing; and was permitting Israel G.

to spend the night frequently. There had been “no observed positive effect on her circumstances or benefit to child Christian” from the services provided. She had “demonstrated little to no maturity in managing her resources and providing safety for Christian and herself.”

DCFS prepared reports before the pre-trial resolution conference in October 2010. At that time, Jessica O. had been living at the shelter for approximately one month. She acknowledged that Israel G. had physically abused her. She admitted occasionally smoking marijuana in the past. Her counselor reported that she was doing well, that Christian O. was bonded with her, and that she was attending all her classes. Jessica O. reported that she was ready to move in with her father and felt that she had made sufficient progress to be able to leave the shelter. DCFS believed that Jessica O. appeared to understand her issues well but that she had “unrealistic thinking about her short term progress.” She was a young mother, and DCFS found she tended to make “immature decisions.” She had several times promised to comply with DCFS orders but contravened them, ultimately resulting in the commencement of dependency proceedings; DCFS therefore considered the contemplated move “extremely premature” and recommended that they remain at the shelter.

The juvenile court continued the hearing until late November 2011 to permit the parties to determine whether a resolution could be reached. The following month, DCFS advised the court that there had been no reported problems at the shelter and that both Jessica O. and Christian O. appeared to be doing well. Jessica O. and Christian O. were bonded, and she took good care of him. She was taking advantage of the shelter’s services, understood that she needed time to address her personal issues, and appeared to agree that she needed to wait before leaving the shelter. DCFS recommended that they remain in the shelter but asked for discretion to permit them to move in with the maternal grandfather if appropriate.

In December 2011 Jessica O. and Christian O. moved into the maternal grandfather’s home. Jessica O. began attending school to obtain her General Equivalency Degree, with a plan to attend beauty school thereafter. The maternal grandfather

provided child care when she was at school. Jessica O. reported that she had no contact with Israel G. and that criminal proceedings were underway against him for the domestic violence. Jessica O. had discontinued counseling and parenting skills education. She said she felt it was no longer necessary because she was not with Israel G. DCFS believed that dependency jurisdiction was appropriate because Christian O. was very young, Jessica O. had discontinued participation in her program and left the domestic violence shelter, had smoked marijuana in the past and was involved in a relationship with domestic violence.

At the jurisdictional hearing in February 2012, DCFS argued that dependency jurisdiction was appropriate because of the seriousness of the domestic violence; Jessica O.'s initial denial and reluctance to report the incident; her lack of cooperation in getting into counseling; and her failure to complete a program for victims of domestic violence. Counsel for Christian O. argued that Jessica O. had failed to protect Christian O. repeatedly and that she appeared not to have completed counseling and parenting education. Jessica O. maintained that no pattern of failing to protect Christian O. had been proven and that there was no present risk of harm to him.

The juvenile court found that Christian O. was a dependent child under section 300, subdivision (b). Jessica O. appeals.

DISCUSSION

Jessica O. contends that insufficient evidence supported the juvenile court's finding of jurisdiction over Christian O. because there was no evidence of a current risk of harm. We review the jurisdictional findings for substantial evidence (*In re P.A.* (2006) 144 Cal.App.4th 1339, 1344) and conclude that the findings were supported by substantial evidence of a risk of harm to Christian O.

As Jessica O. points out, she had gone to a domestic violence shelter, participated in counseling, and ended her relationship with Israel G.; but there was also evidence that she was reluctant to go to the shelter, wanted to leave within a very brief time, left the shelter, dropped out of counseling, failed to complete a victims' education course, and

continued her relationship with her abuser after promising to cease contact with him. Although Jessica O. characterizes the dependency proceedings arising out of a single incident of domestic violence, the record actually showed repeated instances of Jessica O. failing to maintain a safe environment for her son. For instance, Jessica O. had left her son with a neighbor whose name she did not know, and he was found in a room with a pit bull. She had also left him alone with Israel G. despite his drug use, mental health issues, and a violent past that had resulted in Israel G.'s family members and neighbors obtaining restraining orders against him. Jessica O. repeatedly denied that Israel G. was dangerous and did not obtain a restraining order against him to protect herself and her son. She remained in contact with him even after being ordered not to. The violent incident that Christian O. witnessed was not the only time that Israel G. hit Jessica O., but she had failed to protect Christian O. from contact with Israel G. Jessica O., moreover, discontinued counseling and parenting education upon leaving the shelter, contending that it was no longer necessary because she was no longer with Israel G. As the record showed that Jessica O. had failed to keep Christian O. safe in multiple ways, did not fully appreciate the detrimental nature of her conduct, and minimized the risk to her son to the point that she believed she no longer needed services as long as she was not seeing Israel G., the court reasonably was concerned for the risk to Christian O. as a result.

Jessica O. likens the instant case to the facts of *In re Daisy H.* (2011) 192 Cal.App.4th 713, in which the appellate court found no basis for jurisdiction where the father had physically abused the mother but they had separated by the time of the jurisdictional hearing. This case is, however, factually very different from *Daisy H.* There, the abuse had taken place at least two years earlier, and possibly as long as seven years before. (*Id.* at p. 717.) The children had not witnessed the violence. (*Ibid.*) There was no evidence that the children were being exposed to or had been exposed to any violence. (*Ibid.*) Here, in contrast, Christian O. witnessed the violence against Jessica O., and he was afraid and crying. The violence had occurred only months before, and Jessica O. had initially denied the abuse, remained in contact with the abuser, and

delayed ending the relationship. This was not, as in *Daisy H.*, a situation where all the violence, and any risk, were well in the past.

Citing *In re Steve W.* (1990) 217 Cal.App.3d 10, Jessica O. argues that the jurisdictional finding should be reversed because jurisdiction was based on an inappropriate speculative concern that she might be drawn into a violent relationship in the future. The jurisdictional findings here, however, were based on actual events and the present risk to Christian O. from the domestic violence, his mother's failure to protect his safety, her minimizing behavior, and her discontinued participation in services, not on pure "speculation about the mother's possible future conduct," as in *In re Steve W.*, at page 22. The comment upon which Jessica O. bases her argument about speculation, moreover, was advice the court gave to Jessica O. after the court had already made its jurisdictional findings. The court reassured Jessica O. that the dependency proceedings need not be protracted: if she enrolled in a domestic violence group program for victims, they could "come back in six months, close the case and that will be the end of it. I think you're 20?" Jessica O. confirmed that she was nearly 20 years old. "You're a young kid," the court responded. "You need to understand the depth of the problem." "I do," Jessica O. told the court. The court advised, "You've gotten a good start. You got a lot of information already, but I just want to make sure, because I want your child to be safe for the rest of your life so you can avoid these kinds of domestic violence relationships in the future and know what to do when you spot it. It's not quite so simple. It takes a lot of work to—with these programs to get it fully. It can be subtle as, hey, I don't want you going out tonight, then it starts, hey, I don't want you going out with so and so; I don't want you to go with your girlfriends; I don't want you to see your mom and dad. I want you to stay home, then the next thing is this." We do not believe that this comment can reasonably be understood as articulating a basis for taking jurisdiction: it occurred after the jurisdictional findings and in the context of the dispositional orders, and it evinces the court's desire that Jessica O. take to heart the principles that she would learn in the domestic violence program in which she had been ordered to participate. Jessica O. has not demonstrated any error or insufficiency in the jurisdictional findings.

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

WOODS, Acting P.J.

JACKSON, J.