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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re M.C. et al., Persons Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

H.C.,

Defendant and Appellant.

B236463

(Los Angeles County
Super. Ct. No. CK86886)

APPEAL from orders of the Superior Court of Los Angeles County,
Tim R. Saito, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and
Appellant.

Office of the County Counsel, John Krattli, Acting County Counsel, James
M. Owens, Assistant County Counsel, Emery El Habiby, Deputy County Counsel,
for Plaintiff and Respondent.

H.C. appeals the jurisdictional findings and dispositional orders entered by the juvenile court with respect to his stepdaughter, M.C., and his three biological children, Ma.C., J.C. and Me.C. He contends the juvenile court erred in exercising dependency jurisdiction, in removing the children from his custody and in making dispositional orders that have no relationship to the case. We reject these contentions and affirm the orders of the juvenile court.

FACTS AND PROCEDURAL BACKGROUND

On March 2, 2011, the Department of Children and Family Services (the Department) received a referral from the Los Angeles Police Department alleging sexual abuse of 15-year-old M.C. by her stepfather, H.C. The referral indicated officers went to the home of M.C.'s boyfriend after mother reported that M.C. had run away from home several weeks earlier. As the officers drove M.C. to her home, M.C. stated she ran away because H.C. had been having sexual intercourse with her for the prior two years, the last incident occurring in January of 2011. The detention report indicated mother denied any previous knowledge of the abuse. Mother stated she worked long hours but claimed her children rarely were alone with H.C. as her mother-in-law also lived in the home. Mother stated M.C. had been hanging around girls who were a bad influence who might have coached her to make these allegations. Mother and H.C. had been in a relationship for 15 years and they had three children in common, Ma.C., J.C. and Me.C., ages 13, 12 and 9 years. Mother did not believe H.C. was capable of abusing M.C. as he had cared for the child since she was two months of age.

Mother admitted that, in 2005, H.C. struck J.C. after J.C. stabbed Ma.C. near her eye with a pencil. This incident resulted in a referral to the Department and an agreement by H.C. to participate in an anger management class. Otherwise there had been no domestic violence in the home.

M.C. told a female police officer that H.C. had been having sexual intercourse with her since she was 13 years old. The incidents would occur when

mother was at work and while M.C.'s siblings were playing outside. M.C. also disclosed physical abuse by H.C., resulting in bruises on her back.

M.C. told the social worker she ran away because H.C. forced her to have sex with him and would hit her if she refused. The abuse occurred "mostly every week" at 5:00 or 6:00 p.m. in the family's one-bedroom apartment. M.C. indicated paternal grandmother would be present in the home but was busy cleaning, cooking or gardening. M.C. denied that H.C. was under the influence when these incidents occurred. M.C. stated the abuse started when H.C. called her into the bedroom and ordered her to remove her clothes. H.C. told M.C. not to report the abuse or she would be taken from mother. M.C. stated H.C. has hit her with a belt and his hand and that mother and H.C. have engaged in physical altercations in which H.C. struck mother in the presence of the children.

Ma.C. told the social worker she has seen her parents engage in violent altercations about mother's practice of leaving the children at home to "take off with other men." H.C. blamed mother when M.C. ran away and believed M.C. learned this behavior from mother. Ma.C. indicated she once saw H.C. strike mother in the stomach.

J.C. stated H.C. once struck mother in the face causing marks and bruises. H.C. also has hit J.C. with a belt but it did not leave a mark. H.C. smokes marijuana and drinks alcohol but J.C. reported no change in his demeanor due to drug consumption. J.C. denied that she and her siblings were ever left alone with H.C. for long periods of time but admitted M.C. is sometimes alone with H.C. inside the home for five to ten minutes to "discuss things."

Me.C. told the social worker H.C. smokes marijuana and drinks alcohol but denied that he got drunk often. Me.C. admitted there have been incidents of domestic violence in the home between H.C. and mother and Me.C. once saw H.C. punch mother in the face.

The Department took the children into protective custody and filed a dependency petition. On March 7, 2011, the juvenile court released the children to mother and ordered that M.C. immediately commence individual counseling.

The jurisdiction report indicated H.C. denied physical abuse of the children but admitted he disciplined the children with a belt. H.C. also admitted he struck J.C. with a belt when J.C. poked Ma.C. in the eye with a pencil. H.C. otherwise denied striking the children to the point of abusing them or leaving marks. "I don't hit them that hard." H.C. denied domestic violence with mother, claiming mother has been the aggressor. On one occasion, three years ago, when H.C. was attempting to leave with the children, mother punched him and left marks on his face with her rings. H.C. responded by punching mother in the eye, causing a bruise. H.C. denied hitting mother in the stomach but admitted pushing her and admitted the girls have been exposed to domestic violence and have seen marks and bruises on mother and H.C.

M.C. stated H.C. struck the children "only for bad grades" with a belt or a shoe. H.C. once left a mark on the back of her leg and on her lower back and he engages in similar discipline of her siblings. H.C. uses marijuana outside the home in the presence of the children if they are in the yard.

M.C. told the social worker the sexual abuse started in 2007 or 2008 while mother was at work. M.C. indicated H.C. would sexually abuse her approximately three times a week, the last incident occurring in late January of 2011. M.C. stated H.C. would lock the bedroom door and have her shower afterwards. If the bed were "wet he had me change the sheets."

Mother recalled H.C. kissed M.C. "a lot on the cheek and [mother] would tell him to stop because it would bother [her]."

H.C. denied the sexual abuse allegations. He claimed he and M.C. had a good relationship and he treated her like his own daughter. H.C. admitted he smoked marijuana to relieve stress and indicated he smoked more now that he is not

with his children. However, H.C. denied a substance abuse problem and claimed he could stop using alcohol and marijuana at any time.

A report of a medicolegal examination of M.C. revealed a healed notch of the hymen but “[n]o acute trauma was apparent.”

On September 9, 2011, the juvenile court commenced the jurisdiction hearing. M.C. testified the abuse began when she was 13-years old. At the time, M.C.’s family lived in the “back house” and her paternal grandparents, two paternal aunts and uncles and a cousin lived in the “front house.” The “back house” was a garage converted into a large bedroom with a bathroom and a kitchen. No one else was present in the “back house” at the time of the first incident with H.C. which occurred at about 4:00 p.m. H.C. placed her on the bed, pulled her pants down, put his penis in her vagina, ejaculated on her thigh and told her to shower. The entire incident took about three minutes. After she showered, H.C. told M.C. not to tell anyone or she would have to leave the house. It happened again two or three days later, then at least twice week for about five months. The abuse stopped for a month or two, then continued at the same frequency for approximately two years. The abuse continued after the family moved to the “front house” in early 2010.

When M.C. was 14-years old, H.C. had a job and the abuse occurred at 7:00 a.m. when her siblings were asleep in the same room. M.C. was scared and never cried or made any noise. M.C. agreed the abuse occurred more than a hundred times. It hurt every time H.C. raped her. M.C. testified H.C. did not hit her in connection with any sexual incident and testified the mark on her back was “due to something else.” When they moved to the “front house,” the abuse began to occur again in the afternoon.

Regarding domestic violence, M.C. testified she saw H.C. hit mother “a lot” on more than one occasion. M.C. admitted she was angry about the domestic violence but denied she had made up the sexual abuse allegations to remove H.C. from the home. M.C. has seen mother with a black eye and bruises on her arms.

H.C. hit M.C. with a belt due to bad grades about two years ago and she recalled H.C. hit J.C. with a belt a few years earlier causing a bruise on her arm.

Mother testified she, H.C. and the children lived in the “back house” until 1999 when they moved to Oregon for two years and, when they returned to Los Angeles in 2002, they lived in the “front house.” The paternal grandparents and a paternal uncle also lived in the “front house” and were home all day.

Paternal grandmother testified she would start cooking dinner at about 3:00 p.m. in the “front house” and the other people who lived in the home would be in and out all afternoon. She never noticed H.C. and M.C. go into a bedroom by themselves and she never saw M.C. crying or taking a shower in the late afternoon.

The juvenile court sustained the petition under Welfare and Institutions Code section 300, subdivisions (a), (b), (d) and (j).¹ With respect to the allegations of physical abuse the juvenile court found H.C. admitted using a belt on the children and M.C. testified he struck her with a belt on her back and legs to punish her for bad grades and also struck her sister J.C. with a belt. Also, the social reports contain statements by Ma.C. and Me.C. which indicate H.C. hit the children with a belt, at times leaving marks. Regarding the domestic violence allegations, mother and H.C. admitted engaging in physical altercations which resulted in black eyes and bruises and each of the children had made statements indicating mother and H.C. engaged in domestic violence.

The juvenile court found M.C.’s testimony about the sexual abuse credible, noting she had been “descriptive in outlining [the] abuse and what occurred afterward” and her testimony was consistent with her previous accounts.

With respect to the substance abuse count, the juvenile court noted H.C. admitted he smoked marijuana to alleviate problems and he uses more marijuana

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

now because he is not with his children. Also, the children reported H.C. smoked marijuana in their presence.

The juvenile court declared the children dependents and placed them with mother. The juvenile court directed no contact between H.C. and M.C. but ordered monitored visitation between H.C. and the other children. The juvenile court ordered individual counseling for all four children and directed H.C. to participate in a drug and alcohol program with aftercare, random drug and alcohol testing, domestic violence counseling, sex abuse counseling for perpetrators and individual counseling.

DISCUSSION

1. The evidence supports the juvenile court's jurisdictional findings.

Jurisdiction was taken in this case under section 300, subdivisions (a), (b), (d) and (j). H.C.'s primary focus is on the sexual abuse allegations sustained under section 300, subdivision (d). H.C. claims M.C.'s allegations, on their face, were not credible. He argues M.C. had a motive to fabricate charges of sexual abuse to avoid being disciplined for running away to stay with her boyfriend with whom she was having sexual relations. Additionally, M.C.'s claim the abuse started while they lived in the "back house" was contradicted by mother who testified the family lived in the "front house" after 2002. Further, at least eight people lived in the "front house," including M.C.'s paternal grandparents and a paternal aunt and uncle, most of whom were almost always home. However, none of these relatives was aware of the abuse and none of them had ever seen M.C. crying or taking a shower in the afternoon. Also, although M.C. claimed each incident of rape had been painful, examination showed no physical trauma. Finally, although M.C. initially stated H.C. struck her if she resisted his abuse, she later admitted H.C. only hit her for bad grades. H.C. concludes that, on the facts presented, it is not reasonable to believe M.C. repeatedly was subjected to painful rape.

H.C.'s claims patently are meritless.

At a jurisdictional hearing, the juvenile court determines whether the children at issue fall within any of the categories specified in section 300. (*In re Michael D.* (1996) 51 Cal.App.4th 1074, 1082.) The jurisdictional finding must be supported by a preponderance of the evidence. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248; § 355, subd. (a).)

In reviewing a juvenile court's jurisdictional finding, we apply the substantial evidence test. (*In re N.M.* (2011) 197 Cal.App.4th 159, 168; *In re V.M.* (2010) 191 Cal.App.4th 245, 252; *In re Carlos T.* (2009) 174 Cal.App.4th 795, 804-805.) Under this standard, we resolve all conflicts in the evidence in favor of the juvenile court's findings and "indulge every inference in favor of the court's decision so long as those inferences are 'a product of logic and reason' and '... rest on the evidence' [citation]" not on 'mere speculation or conjecture.' [Citation.]" (*In re R.M.* (2009) 175 Cal.App.4th 986, 988-989; *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393-1394.)

Here, M.C.'s testimony and the social reports received into evidence permitted the juvenile court reasonably to conclude that H.C. raped M.C. two or three times a week for two years. H.C.'s argument amounts to a request that this court reweigh the evidence on appeal. This is not our function. Consequently, H.C.'s claim of error must be rejected.

Given that substantial evidence supports the exercise of jurisdiction under section 300, subdivision (d), we need not consider whether there also was evidentiary support for the remaining jurisdictional findings. (See *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491-1495; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 330; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72.) Nonetheless, it is obvious that each of these additional findings is supported by the record.

Section 300, subdivision (a) applies where there is a "substantial risk that a child will suffer serious physical harm inflicted nonaccidentally . . . by the child's parent or guardian." Here, in addition to H.C.'s sexual abuse of M.C., the evidence showed H.C. used inappropriate physical discipline on the children. Further, there

was substantial evidence that H.C. and mother engaged in domestic violence in the presence of the children, thereby placing the children at risk of physical harm.

Given that jurisdiction was proper under section 300, subdivisions (a) and (d), the evidence also supported jurisdiction under section 300, subdivision (b), which applies where there is a “substantial risk that a 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” (§ 300, subd. (b).) Similarly, the juvenile court’s finding that H.C. sexually abused M.C. supported jurisdiction under section 300, subdivision (j), which applies, as relevant here, when a sibling has been abused or neglected as defined in subdivisions (a), (b) or (d).

With respect to the substance abuse findings, the evidence showed H.C. regularly smoked marijuana in the presence of the children and that he regularly drank alcohol. Although M.C. denied H.C. was ever under the influence of drugs when he raped her, the juvenile court rationally could conclude H.C.’s drug abuse was a factor that contributed to H.C.’s molestation of M.C.

In sum, the jurisdictional findings are amply supported by the evidence.

2. The evidence supports the order removing the children from H.C. as well as the other dispositional provisions.

H.C. claims the orders removing the children from his care and limiting his visitation and contact with them must be reversed because he did not present a serious threat of harm to any of the children. He claims the dispositional orders fail to provide for individual and conjoint therapy for the family members. He further asserts the case plan addresses issues which bear no relationship to the facts of this case. In this category, H.C. places the order directing H.C. to participate in a drug and alcohol program with aftercare, substance abuse testing, domestic violence counseling, sex abuse counseling for perpetrators and individual counseling. He asserts these orders improperly require participation in unnecessary services and place unwarranted restrictions on his contact and visitation with the children.

H.C.’s arguments are not persuasive.

With respect to removal, “[b]efore [a juvenile] court issues a removal order, it must find the child’s welfare requires removal because of a substantial danger, or risk of danger, to the child’s physical health if he or she is returned home, and there are no reasonable alternatives to protect the child. [Citations.] There must be clear and convincing evidence that removal is the only way to protect the child.

[Citation.] [¶] Whether the conditions in the home present a risk of harm to the child is a factual issue. Again, we apply the substantial evidence test. [Citation.]” (*In re N.M.*, *supra*, 197 Cal.App.4th at p. 170.)

Here, the juvenile court sustained allegations that H.C. sexually abused M.C. in the home two to three times a week for two years. The juvenile court also found mother and H.C. engaged in domestic violence in the presence of the children and that H.C. engaged in excessive physical discipline of the children. These findings amply supported the order removing the children from H.C. and placing them with mother. Indeed, H.C. does not suggest any less restrictive alternative that might have been considered in this case to avoid removal of the children from H.C.’s care.

With respect to the other dispositional orders, a juvenile court “has broad discretion to determine what would best serve and protect the child’s interest and to fashion a dispositional order in accord with this discretion.” (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006; § 362, subd. (a).)

Here, based on the properly sustained findings that H.C. sexually abused M.C. over an extended period of time, engaged in domestic violence with mother in the presence of the children, excessively disciplined the children and had an ongoing problem with substance abuse, each of the juvenile court’s dispositional orders finds substantial support in the record. H.C.’s claim the juvenile court failed to provide for individual and conjoint therapy for the family members overlooks that each member of the family was directed to participate in individual counseling.

In sum, H.C.’s claims of dispositional error uniformly fail.

DISPOSITION

The orders of the juvenile court are affirmed.

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KLEIN, P. J.

We concur:

KITCHING, J.

ALDRICH, J.