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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re Kaleb L. a Person Coming  
Under the Juvenile Court Law.

B277438

(Los Angeles County  
Super. Ct. No. CK22853)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.L.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Robin R. Kesler, Temporary Judge. (Pursuant to Cal.Const., art. VI, § 21.) Reversed and remanded with instructions.

Johanna R. Shargel, under appointment by the Court of Appeal, for Defendant and Appellant.

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

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## **INTRODUCTION**

Kaleb L., born in 2008, has a history of severe emotional issues. When Kaleb was in second grade, his school contacted the Los Angeles County Department of Children and Family Services (DCFS) after Kaleb's parents, Ronald L. (father) and Tara M. (mother), failed to obtain appropriate mental health services for Kaleb. The court below found that Kaleb was a person described by Welfare and Institutions Code section 300, subdivision (b).<sup>1</sup>

Father appeals, arguing that although Kaleb suffered from emotional problems, there was no evidence that he suffered, or was at substantial risk of suffering, serious physical harm. We agree and reverse. Because the court found that parents' efforts to help Kaleb had not been sufficient to meet his needs, we remand the case to permit DCFS to consider filing a new petition alleging that jurisdiction may be asserted under section 300, subdivision (c) or any other basis it deems appropriate.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Report to DCFS and investigation**

On September 14, 2015, Kaleb's school contacted DCFS and reported that a student heard Kaleb, a second-grader, say that he sucks on his sister's breast. When school staff asked him about this statement, Kaleb refused to provide further information. The school reported to DCFS that Kaleb had emotional issues including oppositional defiance, anger issues, post-traumatic

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

stress, and a lack of respect for adults, including his parents. When a DCFS social worker interviewed Kaleb, he said his sisters do not live with him and he does not visit with them. Kaleb refused to talk to the social worker about the statement regarding his sister's breast.

School staff told the social worker that they had spoken with Kaleb's parents multiple times about Kaleb's aggression toward other students. Father told school staff members that Kaleb had post-traumatic stress after witnessing the death of his grandmother. The school principal noted that on one occasion when Kaleb was being sent home due to his behavior and father came to pick him up, father moved to put his arm around Kaleb and Kaleb flinched as father raised his arm. Father said, "I don't hurt you," and Kaleb responded, "Yes you do."

The principal said Kaleb was typically in her office for disciplinary issues every day. Kaleb had been suspended one time that school year, which started six weeks earlier. The principal said Kaleb exhibits "aggressive behavior to staff and other students, he does not act appropriately to situations, he completes little to no work during the school day, does not complete homework, he often uses foul language, and tells people to shut up including his teacher." A list of discipline entries in a school computer system showed that in the current school year, Kaleb left class without permission, hit and pushed other students, threw objects, ate other students' food, pushed desks into other students, made obscene gestures, and was defiant and combative toward his teachers and school staff. A discipline log from Kaleb's previous school showed that between October 2013 and April 2015, Kaleb poked a student in the face with a pencil, causing injury; hit several other students in the face; choked, bit,

pushed, kicked, and hit other students; threw rocks; kicked a chair that hit a student in the chest, causing an asthma attack; made obscene comments; spit on students; yelled at teachers; and ran away from school staff.

The social worker interviewed Kaleb's parents at their home. Mother and father suggested that Kaleb's statement about his sister's breast had been prompted by a dream, because when the sister lived with them, Kaleb once fell asleep with her while watching TV. Mother said Kaleb's behavioral problems were a result of the fact that Kaleb was very intelligent and was not challenged enough at school. Mother agreed that Kaleb's "anger and behavior is a concern," and said that Kaleb "was seeing a therapist at Children's Bureau but it did not help him." The social worker also noted that mother suffered from health problems relating to an infection caused by a medical device left inside her body during a surgery four years earlier.

Father also said that Kaleb's behavioral problems occurred because Kaleb was intelligent and bored at school. Father said he was "frustrated with the school because Kaleb knows that if he gets into trouble the school will call them to come get Kaleb and that is what Kaleb wants." Father said that Kaleb's previous school "was not appropriate for Kaleb because he was constantly defending himself from the bigger kids and the staff didn't do anything." Father also said that Kaleb's behavior changed after he witnessed his grandmother's death, because Kaleb was very close to his grandmother. When asked if they would be open to mental health services through DCFS, both mother and father "explained that they have had DCFS in their lives and they do not want anything from the department. They both explained that they want to handle things with Kaleb on their own without

DCFS involvement.” School documents show that the school referred Kaleb to services several times.

Both mother and father had DCFS histories involving other children. A case regarding mother’s oldest daughter was initiated in 1996, and mother’s parental rights were terminated in 1999. In 2003, the court sustained a petition involving mother’s second daughter, finding that mother had a history of substance abuse that endangered the child; mother’s parental rights were terminated in 2004. DCFS reports suggest that mother has two additional daughters, but other than reports of abuse found to be unfounded, there is no explanation as to the status of those children. Father’s parental rights were terminated for three of his children in May 1997, and reunification services were terminated for another one of his children in February 2014. DCFS showed additional reports of neglect involving Kaleb from July 2013, February 2014, September 2014, May 2015; each of these reports was deemed inconclusive.

On September 30, 2015, the social worker met with mother and father again. Kaleb’s school had placed him on independent study until he had a psychiatric exam, so the school could develop an individualized education program (IEP) When the social worker informed parents that DCFS was planning to file a petition regarding Kaleb, mother and father “became upset and stated that they are working with the school and doing what they can.” Father said that DCFS “has not provided any services that they have benefitted from in the past and he does not believe another parenting class is going to do anything.” Mother said that “she has enough stress and medical problems that she does not have time to commit to services required of her.” The social

worker noted at this visit that Kaleb appeared to be well bonded with his parents. Kaleb reported no abuse or neglect in the home.

**B. Petition under section 300, subdivision (b)**

On October 5, 2015, DCFS filed a non-detention juvenile dependency petition. The petition alleged that under section 300, subdivision (b), “The child, Kaleb [L.,] has mental, emotional and behavior problems. The child’s mother . . . and father . . . failed to obtain mental health counseling services for the child despite repeated recommendations and referrals from the child’s school. Such medical neglect of the child’s mental health by the parents endangers the child’s physical health and safety and places the child at risk of serious harm, damage, and medical neglect.”

A last minute information dated October 2, 2015 noted that parents were given referrals to mental health services for Kaleb multiple times before parents completed intake procedures for the services in May 2014. Kaleb changed schools shortly thereafter. In September 2015, mother signed a form allowing Kaleb to receive mental health services from his new school.

**C. Additional investigation**

The jurisdiction/disposition report dated November 30, 2015 stated that the dependency investigator met with Kaleb on November 6, and Kaleb was “very charming and engaging.” Kaleb showed no signs of neglect or abuse, and said he feels safe in his home. The investigator “observed very quickly that Kaleb is very intelligent and is very good at outsmarting his mother. [¶] The child Kaleb stated to [the investigator,] ‘When your mom is not so smart and your dad is not so smart it only makes sense your kid turns out to be a genius.’”

The investigator also met with mother on November 6. Mother said Kaleb is a very smart, sweet, and loving child, but “it is frustrating not being able to find out what is wrong” with him. Mother said that Kaleb is difficult to handle at home, because he analyzes the things mother says and talks his way out of trouble. Mother said they had “tried everything” and nothing seems to work. Mother said Kaleb is bored at school and is easily distracted. Mother denied that Kaleb had ever been exposed to domestic violence or abuse.

The investigator met with father the same day. Father said Kaleb is a “different kind of kid”—not a follower, but a leader. Father said he has “issues” with DCFS alleging that parents had not addressed Kaleb’s needs, because before the petition was filed parents were “on top of it following up and making sure things are done.” Father said he wanted the case closed, and that he and mother could deal with Kaleb without DCFS assistance.

The principal of Kaleb’s school reported on November 17, 2015 that although Kaleb recently returned to school (presumably after his period of independent study), he was suspended again for hitting another student. A behavior specialist was to meet with Kaleb weekly. Mother had completed forms to get Kaleb school-based mental health services. The principal said she had never seen evidence that Kaleb had been abused or neglected. She also thought mother would benefit from a course on effective parenting. Updated discipline records from the school noted that Kaleb had choked another child, punched a child in the face, made obscene gestures, yelled at teachers, left the classroom without permission, and shoved desks and chairs.

The Children's Bureau provided a summary of Kaleb's treatment, which said Kaleb had an intake appointment on May 9, 2014. Kaleb attended 14 sessions, but Kaleb's "treatment goal was not met" because Kaleb's caregiver "was not able to bring client to his sessions at this time due to multiple health and socioeconomic issues." Kaleb was "discharged because they are not able to use the services at this point."

A functional behavioral assessment report was included with the jurisdiction/disposition report. It noted that Kaleb "has not yet learned the social skills necessary in order to navigate the school environment. He is very quick to anger and has had difficulties controlling his temper in the classroom. He has missed a great deal of school and is missing some of the basic concepts" needed to be proficient at grade-level work. The report also said that although Kaleb had been referred to counseling, there was no indication he had received "high intensity evidence based interventions." An appointment notice from the Children's Center signed by a clinical therapist noted that Kaleb missed an appointment on October 13, 2015.

An addendum report dated May 26, 2016 stated that there was a referral for physical abuse on April 26, 2016. The report stated, "Kaleb reported father 'socked' him. Kaleb reported father hits him 'all over' but never on his head or face." Law enforcement responded to these allegations and found that Kaleb had no marks or bruises.

A DCFS social worker went to the family home on May 6, 2016, and mother said she would get a restraining order against



father.<sup>2</sup> Father arrived while the social worker was there, and said he was there to retrieve his belongings. The social worker noted that “Father displayed a lot of anger against mother and DCFS.” By May 24, 2016, mother had not yet obtained a restraining order, but father was no longer living in the home. The social worker noted a lack of evidence of abuse, and expected that the report would be deemed inconclusive. The social worker also stated that both mother and father refused to participate in services, and wanted the petition to be dismissed.

An addendum report dated August 23, 2016 said that on July 1, 2016, mother reported that Kaleb’s behavior was getting worse. The report stated that Kaleb “is hitting and kicking his mother, and he is hitting neighborhood children.” On July 29, mother called a social worker and asked for help because Kaleb was acting out. The following day, “Kaleb choked a 2 year old neighbor child, he harmed the family dog, and he assaulted the mother, including ‘head butting’ her. He also assaulted a 6 year old child, with his fists.” Mother called a psychiatric assistance team, which hospitalized Kaleb pursuant to section 5585 et seq.<sup>3</sup> The hospital social worker reported that Kaleb was “in need of intensive services.” Kaleb was medicated to treat extreme agitation, and diagnosed with severe disruptive mood dysregulation. Kaleb was discharged on August 5, 2016. Mother stated that Kaleb was doing better after his hospitalization.

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<sup>2</sup> The record does not clarify whether mother’s intent to get a restraining order was related to Kaleb’s allegations about abuse by father.

<sup>3</sup> Section 5585 et seq. allows a minor who is a danger to himself or others as a result of a mental disorder to be involuntarily hospitalized for 72 hours for evaluation and treatment.

The addendum report also stated that Kaleb had not yet received a medical checkup. Appointments had been scheduled for June 13 and July 22, but mother cancelled them.

**D. Jurisdiction hearing**

The jurisdiction hearing was held August 23, 2016, more than eleven months after Kaleb's school contacted DCFS. Father testified that parents sought services for Kaleb beginning in kindergarten, at Kaleb's first school. Kaleb saw the school psychiatrist, and then began going to the Children's Bureau. In second grade, they had an IEP developed for Kaleb and moved him to a different school. Father moved away from the home when Kaleb reported that father hit him. Father said he never physically disciplined Kaleb. Father said that since Kaleb had been diagnosed with "high, high anxiety" and medicated, he has been doing better. On cross-examination, father admitted that he had not seen Kaleb since he moved out of the family home in April 2016. Father had not been involved in Kaleb's mental health services, and he knew how Kaleb was doing only because mother told him. No other witnesses testified.

Counsel for DCFS asked that the petition be sustained. DCFS argued that Kaleb's emotional issues were escalating, and parents showed a lack of consistency in getting Kaleb the treatment he needed. After Kaleb was hospitalized, the hospital social worker said he needed intensive services. DCFS argued that Kaleb's needs were so severe that he needed court supervision. DCFS also asked that parents be provided parenting classes designed to address Kaleb's special needs. Counsel for Kaleb joined DCFS's arguments.

Counsel for father argued that Kaleb is getting the services he needs, and that parents had been working to meet Kaleb's

needs for several years. Kaleb had seen different psychologists and counselors through his schools, and now he was receiving medication. Father's counsel also argued that Kaleb was currently doing better than he had in a long time. Father's counsel argued that DCFS had not met its burden to show that parents committed medical neglect, and asked the court to dismiss the petition.

Mother's counsel requested that the court order services under section 360, subdivision (b).<sup>4</sup> DCFS disagreed, saying that an order pursuant to section 360, subdivision (b) is appropriate where the parents voluntarily agree to participate in services and there is no need for dispositional orders, which was not the case here.

The court observed that parents sporadically sought treatment from different sources, but they did not actively get involved in the treatment process because they refused parenting classes and often failed to take Kaleb to appointments. The court noted that Kaleb was recently hospitalized, and said that if Kaleb were older, "he'd be in juvenile hall right now based upon his behaviors that occurred just less than a month ago." The court sustained the allegations under section 300, subdivision (b). The court ordered Kaleb to remain at mother's home with visitation with father, and ordered a variety of services for the family.

Father timely appealed.

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<sup>4</sup> "If the court finds that the child is a person described by Section 300, it may, without adjudicating the child a dependent child of the court, order that services be provided to keep the family together and place the child and the child's parent or guardian under the supervision of the social worker for a time period consistent with Section 301." (§ 360, subd. (b).)

## STANDARD OF REVIEW

Father argues that the court's finding of jurisdiction under section 300, subdivision (b) is not supported by substantial evidence because there was no evidence presented that Kaleb was at serious risk of physical harm or illness as a result of parents' actions. "In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. "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." [Citation.]" (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

## DISCUSSION

Father argues that the court's exercise of jurisdiction over Kaleb "pursuant to section 300, subdivision[ ] (b) where there is no evidence that either parent posed a risk of *serious physical harm* to Kaleb is an unreasonable decision unsupported by substantial evidence and must be reversed." DCFS argues that parents "failed to seek mental health services for Kaleb while his mental and emotional problems were escalating" and "the documented history of the parents' resistance toward addressing Kaleb's mental health needs showed jurisdiction was necessary to protect him."

Although the record indicates that the family needed assistance to meet Kaleb's unique and challenging needs, jurisdiction was not warranted under section 300, subdivision (b). A finding under section 300, subdivision (b) "consists of three

elements: (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the minor, or a ‘substantial risk’ of such harm or illness.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) “Subdivision (b) means what it says. Before courts and agencies can exert jurisdiction under section 300, subdivision (b), there must be evidence indicating that the child is exposed to a *substantial risk of serious physical harm or illness.*” (*Id.* at p. 823.)

Subdivision (b) does not provide for jurisdiction based on emotional harm. (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 718.) Here, however, the evidence focused on Kaleb’s mental and emotional issues, and whether parents adequately met Kaleb’s needs relating to those issues—not whether Kaleb was at risk of physical harm. DCFS argues that Kaleb’s mental and emotional issues placed him at risk of physical harm, as evidenced by Kaleb’s hospitalization and the juvenile court’s comment that had Kaleb been older, his behavior likely would have led to incarceration. However, Kaleb was hospitalized after he assaulted neighborhood children and the family pet, thus placing others—not Kaleb—at risk of physical harm. Moreover, the fact that Kaleb needed and received intensive treatment for his serious mental and emotional issues does not warrant a finding of jurisdiction based on risk of physical harm under section 300, subdivision (b).

Emotional harm is addressed in section 300, subdivision (c), which provides that jurisdiction is warranted where “[t]he child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward

self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care.” DCFS asserts that we may affirm jurisdiction based on subdivision (c), “because the court’s reasonable factual findings show [Kaleb was] also described by section 300, subdivision (c).” Indeed, the record indicates that Kaleb was suffering serious emotional damage, as evidenced by his “untoward aggressive behavior toward . . . others” (§ 300, subd. (c)), and the evidence indicates that mother and father were not capable of providing the specialized care Kaleb needed.

However, “[w]e cannot affirm a jurisdictional finding that was never alleged or made in the trial court.” (*In re V.M.* (2010) 191 Cal.App.4th 245, 253.) Because DCFS did not allege that jurisdiction was appropriate under section 300, subdivision (c), and the dependency court did not make any jurisdictional findings under subdivision (c), we cannot affirm jurisdiction based on that subdivision.

As this Division recently noted, “we are repeatedly called on to review jurisdictional findings” where a parent behaves inappropriately “but presents no obvious threat to the children’s physical safety.” (*In re Jesus M.* (2015) 235 Cal.App.4th 104, 112.) Under such circumstances, jurisdiction under section 300, subdivision (b) cannot be sustained. (*Ibid.*) Here, where there was no evidence supporting any finding that Kaleb suffered physical harm or a risk of physical harm, jurisdiction under section 300, subdivision (b) was inappropriate.

### **DISPOSITION**

The jurisdiction and disposition orders are reversed. The case is remanded to the juvenile court. On remand, DCFS may consider whether to file a petition alleging jurisdiction under

section 300, subdivision (c), or any other appropriate allegations supporting jurisdiction.

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COLLINS, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.