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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re JOSHUA J., et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

STEPHANIE S.,

Defendant and Appellant.

B251119

(Los Angeles County
Super. Ct. No. CK38073)

APPEAL from orders of the Superior Court of Los Angeles County,
Marguerite Downing, Judge. Affirmed.

Lori A. Fields, under appointment by the Court of Appeal, for Defendant and
Appellant.

Office of the County Counsel, John F. Krattli, County Counsel,
Dawyn R. Harrison, Assistant County Counsel, and Sarah Vesecky, Deputy County
Counsel, for Plaintiff and Respondent.

Stephanie S. (mother) appeals from the juvenile court's finding at the 12-month review hearing that return of her children J. J., Ju. J. and Joshua J., to her care would create a substantial risk of detriment to them based on evidence that mother would not protect the children from father's violent behavior. At that hearing, the court also held a jurisdictional/dispositional hearing with regards to mother's youngest child, Josef J. On appeal, mother also challenges (1) the court's finding that Josef was at risk of harm due, in part, to the parents' history of domestic violence in the presence of the older siblings, and (2) Josef's removal from her custody. Mother contends that substantial evidence does not support the court's 12-month review, jurisdictional and dispositional orders because there was no evidence father posed a risk to the children or that mother could not protect the children from father. We disagree and affirm those orders.

FACTUAL AND PROCEDURAL BACKGROUND

When this case began in 2012, mother and father had three children together: seven-year-old J., nine-year-old Ju., and 11-year-old Joshua. On January 11 2012, the Department of Children and Family Services (Department) received a referral alleging that the children were victims of physical abuse by both parents.¹ The reporting party

¹ Mother also had a prior court case involving three of her other children based on her use of inappropriate discipline, her abuse of marijuana, and domestic violence between her and the father of those children. Mother failed to reunify with those children and her parental rights were terminated. In addition, with respect to Justis, Ju. and Joshua, there have been 11 prior referrals to the Department alleging neglect and abuse. Ten of those referrals were determined to be inconclusive or unfounded, however, a referral made on September 25, 2008 alleging that Joshua and J. were the victims of general neglect was "substantiated." As a result, mother and father participated in "family preservation" services and therapy for six months between 2008 and 2009.

said that Ju. claimed her parents used belts and clothes hangers to punish her and her siblings.

Later that day, a Department social worker interviewed the children.

Seven-year-old J. stated that mother hit her with a belt when she said bad words, and that father threw a shoe that hit her in the face when she would not eat a banana. J. further said that she witnessed father hit mother “ ‘really hard,’ ” and that her parents smoked “brown things that she called cancer bars.” Likewise, nine-year-old Ju. said that mother hit her, father threw a shoe at her that hit her, and father hit mother. She further stated that her parents smoked marijuana and that she felt safer around the social worker than her family.

Eleven-year-old Joshua denied there was physical abuse in the home. When the social worker asked Joshua if he or his siblings were ever hit, he said “ ‘not really.’ ” He further said that he was only spanked when he was in really bad trouble, father only chased the children with a belt but did not hit them, mother only used a hanger to warn them, and he had not seen father hit mother. He also denied that his parents smoked marijuana. However, when the social worker spoke with Joshua’s therapist, the therapist reported that the parents had a long history of domestic violence. She also said that there was marijuana use in the home, and that mother did not give Joshua his psychotropic medication on a regular basis.

A petition was filed on January 31, 2012, alleging that mother and father had physically abused the children, among other allegations. The court detained the

children. On February 7, 2012, father was convicted of a misdemeanor count of inflicting corporal injury on a “Spouse/Cohabitant.”²

At the jurisdictional hearing on April 11, 2012, the court sustained allegations that mother inappropriately disciplined the children, that father failed to protect them, that mother abused marijuana, and that both parents neglected to ensure that Joshua regularly took his medication.³ The court dismissed the domestic violence count on the ground that the occurrence of violence was “too remote in time.” At the dispositional hearing on April 30, 2012, the court ordered mother and father to complete a substance abuse program, and to participate in individual counseling to address issues of substance abuse, domestic violence, and appropriate parenting. The court further gave the Department discretion to release the children to mother and granted both parents visitation “to be monitored by [a] DCFS approved monitor.”

In an Interim Review Report filed on August 6, 2012, the Department reported that mother was making progress in therapy, and that all of mother’s random drug tests were negative. However, mother’s counselor reported that mother had “express[ed] or [] implied that she is in [im]minent danger with father” The social worker told mother that “[i]f the unmonitored visits were approved she would have to agree to not

² This conviction was in relation to father’s abuse of another girlfriend.

³ The court also sustained allegations that father had a history of substance abuse and was a current abuser of marijuana. Father appealed from this count and argued that there was insufficient evidence to support the trial court’s finding that he had a substance abuse problem. (*In re Joshua J.* (B241205; filed on January 4, 2013) [nonpub. opn.].) We agreed and reversed as to this particular jurisdictional finding. (*Ibid.*)

allow the father to have contact with the children at anytime and she would need to be proactive in protecting her children. So if father showed up to her home or at the visit, she would need to call the police or obtain a restraining order if she felt threatened in any way.” Mother agreed to those conditions and said she had not been in a relationship with father for over a year.

On September 14, 2012, mother again reported to the social worker that she and father were living separate lives and did not interact. The children also said that they had not had a visit with father “ ‘for a long time,’ ” and that they liked visiting with mother. The Department reported that mother was consistently on time and played with the children, and that it had liberalized mother’s visits to unmonitored, to include overnight and weekend visits.

On September 25, 2012, Ju. and J. told a social worker that father had been present during unmonitored visits. Mother denied this. The following month, the Department informed the court that mother was expecting another child by father, and that mother had misrepresented to the social worker that father was not responsible for her pregnancy.

In November 2012, Joshua told his therapist that father visited regularly when the children were visiting mother, and that mother told him to lie “all the time” so that they could come home to live with her. J. also told a social worker that “ ‘my mom tells me to say no to anything you ask me because I won’t get to go home.’ ” Mother denied these allegations.

In December 2012, J. and Joshua’s foster mother reported that the children said father had been present at mother’s house the previous weekend. J. had told her foster mother that “they did not have a good weekend because her father got mad,” and “[i]mmediately, Joshua[,] who overheard her comment . . . explained that [d]ad was mad at mom because she was talking, but they worked it out and everything is fine.”

In advance of the six-month review hearing, the Department recommended to the court that the children remain in their current foster homes and filed a Welfare and Institutions Code⁴ section 388⁵ petition requesting that mother’s visits be changed from unmonitored to monitored. At the contested hearing on December 19, 2012, the court found that return of the children to mother’s custody would be detrimental to them and granted the section 388 petition. Mother appealed and we affirmed the juvenile court’s orders. (*In re Joshua J.* (B247513; filed on February 11, 2014) [nonpub. opn.])

On January 14, 2013, mother obtained a restraining order against father, and indicated that she would call the police if father attempted to see the children. The following week, mother told her counselor she was “engaging in positive activities” with her children “without the negative feedback or consequences of her husband’s abuse.”

⁴ All further statutory references are to the Welfare and Institutions Code.

⁵ Section 388(a)(1) provides, “[a]ny parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made”

On February 19, 2013, mother gave birth to Josef J. Mother took the infant home with her. On March 1, 2013, mother told the Department she was unaware of father's whereabouts, however, the following week father reported that he was residing next door to mother's house, and a neighbor confirmed this. On March 8, 2013, a center for parenting classes reported that mother and father had both enrolled in a parenting program there on the same day.

On March 15, 2013, the Department interviewed mother regarding her ability to protect the children from father. Mother told the Department she did not have any contact with father but that she was "thinking of having the [r]estraining [o]rder against [] father removed." Mother also claimed that father did not reside next door but only used that address for mail.

When asked if she had enrolled in a parenting program with father, mother said she "did not know anything about that" and "maybe father signed her up." When the Department informed mother that an agency would only sign her up for services if she personally requested them, mother "had no response."

During the interview, mother said she "d[id] not understand why father can[]not see his child," and "asked what does father need to do in order to have contact with his children?" She further said that she "believes in giving people second chances" and will need help caring for Joshua, J. and Ju. when they return to her custody. The Department social worker explained to mother that allowing father to have contact with the children was a safety concern because he had not (until recently) participated in any of the services ordered by the court. Mother responded, "how can a father not see his

child[?]" The Department concluded that "it was clear [] mother continues to have contact with father "

On March 27, 2013, the Department filed a petition alleging that Josef was endangered under section 300, subdivisions (b) and (j), based on mother's inappropriate physical discipline of the three older children and her violation of the court's order that father not visit those children at her home. The court detained Josef in shelter care and granted mother and father monitored visitation.

On April 12, 2013, mother was interviewed regarding the petition's allegations regarding Josef. Mother said "[the Department] said I couldn't protect [the children] from their daddy [but] [h]e was never no threat or harm." Mother further said she was not "clear" as to why her unsupervised visits were changed back to monitored visits because "father wasn't here or seeing the kids during my visits." Mother also denied there was ever domestic violence between her and father and claimed that she only told her counselor she was afraid of father because he "would not attend her substance-abuse class with her." Mother wanted to do "couples counseling" with father and to renew her romantic relationship with him. She stated that she did not know why she filed for a restraining order "other than she felt she had to" based on her social worker's statements, and that she now wanted the restraining order to be lifted.

On May 9, 2013, the Department filed a first amended petition adding the allegation that the parents had a history of domestic violence in front of the three older children and mother had failed to protect them by allowing father to have contact with

the children during her unsupervised visits. The petition alleged that these actions placed Josef at risk under section 300, subdivisions (b) and (j).

The adjudication hearing, with respect to Josef, and the 12-month review hearing, with respect to the three older children, were held on June 14, 2013. As to the jurisdictional issue, the court dismissed the allegations under section 300, subdivision (b), on the ground that the alleged events “predate[d] Jose[f]’s birth.” The court sustained allegations that Josef was at risk under section 300, subdivision (j), due to (1) parents’ history of domestic violence, (2) mother’s violation of the court’s visitation orders, and (3) mother’s inappropriate physical discipline of the three older children. The court ordered Josef removed from his parents’ custody, ordered mother to remain in individual counseling and to participate in a domestic violence support group, and granted the parents monitored visitation.

With respect to the 12-month review hearing, the court found that “mother has consistently and regularly visited with these children,” and “ha[d] made significant progress in resolving the issues that le[d] to the removal of these children. . . .” However, the court found that return of the children to their parents’ custody would create a substantial risk of detriment to their well-being. The court also noted that father had not attended any of the classes or counseling ordered by the court. Mother timely appealed all of the findings and orders made at the hearing.

CONTENTIONS

Mother contends that the juvenile court erred in sustaining jurisdiction over Josef, and removing him from her custody. Mother also challenges the court’s finding

that Ju., J. and Joshua would be at risk of harm if returned to her care.⁶ The Department cross-appeals with respect to the court’s jurisdictional findings, and contends that the juvenile court erred in dismissing the petition’s allegations under section 300, subdivision (b).

DISCUSSION

1. Standard of Review

We review the juvenile court’s jurisdictional and dispositional findings for substantial evidence. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) Substantial evidence is “evidence that is reasonable, credible and of solid value.” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1401.) “ ‘In making this determination, all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.] In dependency proceedings, a trial court’s determination will not be disturbed unless it exceeds the bounds of reason. [Citation.]’ ” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.)

An order dismissing petition allegations is also reviewed for substantial evidence. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 200 [affirming dismissal of

⁶ In addition, mother contends that the Department did not comply with the Indian Child Welfare Act (ICWA) because (1) it failed to inquire with father or paternal relatives regarding father’s statement that he had Native American heritage, and (2) it did not send out notice under the ICWA as ordered by the court. The Department contends that this issue is moot as the juvenile court has since found that the Department conducted a proper inquiry into father’s claims of Native American heritage, that the Department provided proper notice under the ICWA, and that the ICWA does not apply. We have dismissed this portion of mother’s appeal as moot. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1490.)

petition where record did not contain “indisputable evidence of abuse”].) Likewise, the juvenile court’s finding at a 12-month review hearing that returning a child to parental custody poses a risk of detriment is reviewed for substantial evidence. (*Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1345.)

2. *Substantial Evidence Supported the Jurisdictional Findings and Removal Order*

Mother challenges the juvenile court’s findings that it had jurisdiction over Josef under section 300, subdivision (j), based on (1) the parents’ history of domestic violence in the presence of the three older children, (2) mother’s violation of the court’s visitation orders, and (3) mother’s inappropriate physical discipline of the older children. “When 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. [Citations.]” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) Here, we focus on the sustained allegation of domestic violence, and do not address the alternative grounds for jurisdiction.

Section 300, subdivision (j) applies if (1) “[t]he child’s sibling has been abused or neglected, as defined in subdivisions (a), (b), (d), (e), or (i),” and (2) “there is a *substantial risk* that the child will be abused or neglected, as defined in those

subdivisions.” (Section 300, subd. (j) (*italics added*).) In making this determination, the court should consider “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.” (*Ibid.*) The language in subdivision (j) does not require the juvenile court to make any express finding under section 300 as to a sibling.

Here, mother argues there was no “substantial risk” to Josef based on the parents’ history of domestic violence because there had not been any such incidents since the dependency case began one year and one-half earlier, and there was no evidence father had been “near the children” or that he had any “personal conduct” with mother since December 2012 when mother’s visits were changed back to monitored.

Although there were no documented incidents of domestic violence between the parents during the pendency of this case, the risk of domestic violence remained high. Although the court ordered father to participate in individual counseling to address issues of domestic violence, he did not do so. In addition, although mother had complied with her case plan, her conduct and statements showed that she continued to have contact with father and was unwilling or unable to protect the children from him.

The evidence was as follows: (1) a treatment center reported that mother and father had enrolled in the same parenting program on the same day, and although mother initially denied this, she “had no response” when the Department informed her the center would not have allowed a third party to enroll her in services; (2) father and

a neighbor said father lived next door to mother during the months prior to the hearing although mother denied this; (3) although mother filed for a restraining order against father, she now wanted to terminate that order and renew their romantic relationship; (4) mother now denied that there had ever been domestic violence between her and father or that he posed a threat to the children despite having previously acknowledged being “in [im]minent danger with” father; and (5) mother had recently claimed that father never saw the older children during her unmonitored visits with them although all three children reported the contrary.

All of this evidence indicated that mother continued to have contact with father, that she continued to attempt to conceal that contact from the Department, and that she did not recognize that father posed a safety threat to the children. Although mother had made progress with her case plan, she still had not shown she would protect the children from father as she would not acknowledge that they even needed protection from him. On all these grounds, there was substantial evidence supporting the court’s finding that Josef was at substantial risk of being exposed to domestic violence between the parents.

The court’s removal order was also supported by substantial evidence on the same grounds. Under section 361, subdivision (c), the juvenile court may remove a dependent child from the physical custody of his parents when the court finds, by clear and convincing evidence, that there is “a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without remov[al]” from the parents’ physical custody.

Here, mother maintained contact with father, denied the overwhelming evidence that father had engaged in domestic violence, continued to attempt to conceal her and the children's contact with father, rejected the idea that father posed a threat to the children, and affirmatively stated she believed father should see the children. All of this evidence supported the finding that there would be a substantial danger to Josef's physical and emotional well-being if he were returned to mother's care and that there were no reasonable means by which he could be protected without removal.

3. *Substantial Evidence Supports the Detriment Finding*

Section 366.21, subdivision (f), governs the 12-month review hearing and provides that "the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child."

Mother contends there was no substantial evidence of detriment because father did not pose a risk to the children. This argument fails for the same reasons stated above: there was a substantial risk the children would continue to be exposed to father and that mother would not protect them from father's violent behavior.

4. *We Need Not Decide the Cross-Appeal*

The Department cross appeals from the juvenile court's dismissal of the allegations under section 300, subdivision (b). However, dependency jurisdiction over Josef is already supported by the sustained allegations under section 300,

subdivision (j). The court took jurisdiction over Josef, removed him from parental custody, and ordered the parents to participate in services. As the Department does not identify any consequence of the dismissal of the allegations under subdivision (b), we decline to review whether those allegations constituted an additional ground for jurisdiction. However, we note that subdivision (b) only addresses a parent's neglect of the child that is *the subject* of the petition. Here, the allegations under subdivision (b) addressed neglect of Josef's older siblings, not Josef.

DISPOSITION

The orders are affirmed.

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KITCHING, Acting P. J.

WE CONCUR:

ALDRICH, J.

LAVIN, J.*

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