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

In re R.R., a Person Coming Under the Juvenile Court Law.	B288441
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. Ronald R., Defendant and Appellant.	Los Angeles County Super. Ct. No. 17CCJP00162A

APPEAL from an order of the Superior Court of Los Angeles County, Julie Fox Blackshaw, Judge. Affirmed.

Julie E. Braden, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, David Michael Miller, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Father Ronald R. challenges the dependency court's jurisdictional finding regarding his teenage son (the minor) under Welfare and Institutions Code¹ section 300, subdivision (b), for lack of substantial evidence. The Department of Children and Family Services (Department) removed the minor from father and filed a petition alleging serious physical abuse by father under section 300, subdivision (a), and mother's failure to protect the minor from abuse by father under section 300, subdivision (b). The allegations related to an incident between father and the minor, as to which the minor gave at least four inconsistent accounts and mother, who witnessed the interaction, gave at least two inconsistent accounts. The variation among the accounts was significant in that it related specifically to father's actions: In the most extreme account, father chased the minor around his front yard, caught him, punched him four times in the back of the head, and then pushed him to the ground; by other accounts, however, father and minor were running around the front yard and the minor fell. The court, faced with conflicting evidence, dismissed the allegation under subdivision (a), dismissed the allegation regarding mother's failure to protect, and sustained a modified allegation as to father under subdivision (b). We affirm that jurisdictional finding because it is supported by substantial evidence.

The Department filed a cross-appeal challenging the court's dismissal of the jurisdictional allegation under section 300, subdivision (a). In light of the conflicting evidence regarding

¹ All undesignated statutory references are to the Welfare and Institutions Code.

father's actions, the court did not err in dismissing the subdivision (a) allegation. Regardless, any error in dismissing that allegation is harmless in light of our affirmance of the court's finding under subdivision (b).

FACTS AND PROCEDURAL BACKGROUND

Prior to the Department's involvement in the present case, the minor lived with father. Father's grandmother (the paternal great-grandmother) also lived in the home. The minor had frequent contact and overnight visits with mother and her five other children.

This family's most recent involvement with the Department² occurred when mother called the police after witnessing an incident involving father and the minor. Exactly what transpired between father and the minor is unclear, however, because father, mother, and the minor provided varying accounts of what happened, and both mother and the minor later revised their earlier statements.

The incident at issue occurred on August 4, 2017, at father's home. After police officers arrived at the scene, mother reported that she brought the minor to father's home to pick up some of his belongings and saw the minor and father engage in a verbal dispute. Father became angry, started to chase the minor around the front yard, and ultimately punched the minor in the head and pushed him to the ground. But during a subsequent interview by the Department, mother said father and the minor

² In the years prior to the initiation of this case, the Department and the Los Angeles Police Department received frequent calls concerning the family generally and the minor in particular.

were having a verbal dispute and father started pulling at the minor. When the minor broke loose, he fell. She denied seeing father hit the minor.

When interviewed by law enforcement on August 4, 2017, the minor gave three different accounts of what transpired. First, he said he and father got into a heated argument inside the house, at which point the minor ran outside. Father chased him and punched him in the chin. The minor attempted to run away again but tripped and fell to the ground. A second officer spoke to the minor, who said he was in the house and father said he felt the minor had disrespected the paternal great-grandmother. The minor was afraid father would discipline him, so he ran outside. Father chased the minor to the front yard where they both ran around father's truck in the driveway and then to the sidewalk, at which point the minor tripped and fell to the ground. The minor admitted he lied to the first officer who interviewed him. A third officer interviewed the minor at the scene. This time, the minor stated father became angry with him and chased him out of the house. Father caught him, then punched him four times in the back of the head and pushed him to the ground. None of the officers observed any injuries to the minor and mother refused medical treatment at the scene. And when he was later questioned by the Department, the minor denied father ever hit him.

Father's account remained consistent. Father told police officers the minor arrived at his home with mother and father asked the minor to apologize for being rude to the paternal great-grandmother. The minor responded, " 'Fuck no I aint saying shit to her,' " and began slamming doors and hitting walls inside father's home. When father tried to stop the minor's behavior, the

minor ran out of the house to the driveway, kicked father's truck, and threw a bottle of soda at father's other car. Father chased after the minor, who fell to the ground. Father recounted a similar sequence of events to the Department and denied ever hitting the minor.

The Department detained the minor from father on September 6, 2017, placed him with mother in her home, and filed a petition under section 300, subdivisions (a) and (b), on September 8, 2017. The petition contained a single allegation asserted under each subdivision:

"The child[s] father, ... has physically abused the child. On 08/01/2017, the father struck the child's chin with the father's fists. The father pulled the child up by the child's neck. The father grabbed the child's arm inflicting a bruise to the child's arm. The father repeatedly struck the child's chest Such physical abuse was excessive and caused the child[] unreasonable pain and suffering. The child's mother, ... knew of the father's physical abuse and failed to protect the child. Such physical abuse of the child by the father and the mother's failure to protect the child endanger the child's physical health and safety, and place the child at risk of serious physical harm, damage, danger, physical abuse and failure to protect."

At the adjudication, the court noted the conflicting accounts of the incident and specifically noted that although both mother and the minor initially stated father punched the minor, the minor's accounts at the scene were inconsistent. After reviewing the evidence in detail, the court dismissed the allegation under subdivision (a) and found true the amended allegation concerning mother's failure to protect the minor under subdivision (b).

Further, the court amended³ the allegation under subdivision (b) to conform to proof and sustained the following allegation as to father only:

“The child[’s] father, ... engaged in violent behavior with the minor resulting in chases between the father and minor. Minor tripped and fell while engaged in a chase with the father causing law enforcement to be called. Minor stated to law enforcement that father punched him. Such violent behavior by the father endangered the child’s physical health and safety and placed the child at risk of serious physical harm, danger, damage, [and] physical abuse.”

Father timely appeals.

CONTENTIONS

Father contends the jurisdictional allegation under section 300, subdivision (b), is not supported by substantial evidence. The Department, in its cross-appeal, contends the court erred in dismissing the jurisdictional allegation under section 300, subdivision (a).

³ Although the minute order indicates the petition was amended by interlineations, the copy of the petition contained in the appellate record does not contain any interlineations. We rely upon the amended allegation the court read into the record at the time of the adjudication.

DISCUSSION

1. **The court's jurisdictional finding is supported by substantial evidence.**

Father contends the court's jurisdictional finding is not supported by substantial evidence. We disagree.

We review a jurisdictional order for substantial evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) “ ‘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.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] ‘ “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence ... such that a reasonable trier of fact could find [that the order is appropriate].” ’ ’ ’ ’ ” (*Ibid.*)

A child may be adjudged a dependent of the court under subdivision (b) of section 300 if the “child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent ... to adequately supervise or protect the child” (§ 300, subd. (b)(1).) The juvenile court need not find “that a parent is at fault or blameworthy for her failure or inability to supervise or protect her child.” (*In re R.T.* (2017) 3 Cal.5th 622, 624.) “The

three elements for jurisdiction under section 300, subdivision (b), are: ‘“(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the [child], or a ‘substantial risk’ of such harm or illness.”’ [Citations.] ‘The third element, however, effectively requires a showing that *at the time of the jurisdictional hearing* the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur).’ ” (*In re B.T.* (2011) 193 Cal.App.4th 685, 692.) Evidence of past conduct may be probative of current conditions. (*In re James R.* (2009) 176 Cal.App.4th 129, 135–136.) To establish a defined risk of harm at the time of the hearing, there “must be some reason beyond mere speculation to believe the alleged conduct will recur. [Citation.]” (*Id.* at p. 136.)

Here, the court’s finding of jurisdiction rested on its assessment of the conflicting accounts provided by mother, father and the minor. The court rejected the revised statements by mother and the minor, finding the statements they provided at the scene were likely more reliable. As noted, however, even those statements were not consistent. Ultimately, the court found that each of the accounts included a statement that the minor ran out of father’s house while being chased by father, which resulted in some injury to the minor. The court found that a “violent chase” had taken place which was dangerous and placed the minor at risk of serious physical injury.

Reviewing the record in the light most favorable to the court’s determinations, we conclude substantial evidence supports the court’s finding under section 300, subdivision (b). Faced with inconsistent evidence, the court was required in this case to evaluate the various accounts and choose the most

credible version. Here, the court rejected both the most extreme account (that father punched the minor four times in the back of the head and then pushed him to the ground) as well as the revised statements indicating father never hit the minor at any time. In doing so, the court distinguished between serious physical abuse by father and the less serious (but still concerning) conduct of angrily chasing the minor and thereby creating a dangerous situation that put the minor at risk of serious physical injury. This is exactly the sort of fact-finding function committed to the discretion of the court.

Father contends the court erred in finding the jurisdictional allegation true because, he asserts, the minor was not at substantial risk of future injury at the time of the jurisdictional hearing, which took place on February 6, 2018, six months after the August 4, 2017 incident. Father offers two supporting theories, neither of which is persuasive.

First, father asserts that both mother and the minor had revised the allegations which led to the Department's involvement in this case. But as just explained, the court discounted those revised statements, finding the statements made by the minor and mother at the time of the incident to be more credible. We will not substitute our judgment for the court's on this point.

Second, father claims that as of the time of the jurisdictional hearing, the parents had services in place "to deal with [the minor's] behaviors." Specifically, father notes the minor had an individualized education plan in place and a behavior contract with the school and was participating in in-home counseling and therapy. The minor was also on a waiting list to see a psychiatrist. Father also highlights that visitation had

progressed from monitored visitation to unmonitored weekend visits and that the minor looked forward to those visits to such an extent that they could be used as an incentive to help the minor improve his behavior.

It does appear from the record in this case that the minor's past behavior presented substantial parenting challenges. To be sure, services designed to support the minor and address the issues creating challenges for him may help him improve his behavior, to the benefit of his parents as well as the minor himself. But the court, in making its jurisdictional finding, did not rest its decision on the minor's behavior alone—a course it could have taken. (See *In re R.T.*, *supra*, 3 Cal.5th at p. 624 [statute authorizing dependency jurisdiction if a child suffered 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’” does not require parental culpability].) Instead, the court found father's reaction to his son's behavior, i.e., angrily chasing him out of the house and around the front yard, created a situation that placed the minor at a risk of serious physical harm. And while father and the minor both appear to be on the road to successful reunification, that fact does not undermine the court's assertion of jurisdiction in the first instance.

In short, the court carefully reviewed the conflicting evidence and credited what it believed was the most likely account of the events of August 4, 2017. As this is exactly the type of fact-finding committed to the sound discretion of the juvenile court rather than this court, and the court's finding is supported by substantial evidence, we affirm the court's jurisdictional finding.

2. The court did not err in dismissing the alternative jurisdictional allegation. Any error was not prejudicial.

The Department contends, in its cross-appeal, that the court erred in dismissing the jurisdictional allegation under section 300, subdivision (a). We disagree.

First, the evidence did not require the court to find true the jurisdictional allegation under section 300, subdivision (a). That subdivision required the court to find that father nonaccidentally inflicted serious physical harm on the minor or that there was a substantial risk he would do so.⁴ But as just noted, the evidence regarding father’s conduct on August 4, 2017, was sharply conflicting. The court properly considered each of the accounts of the confrontation between the minor and father and found that father’s behavior—chasing the minor out of the house and around the front yard—created a risk of serious physical harm to the minor. But notably, the court stopped short of finding that father had nonaccidentally inflicted a serious injury on the minor, or that there was a substantial risk he would do so in the future. In light of the evidence—particularly the accounts which stated that

⁴ Section 300, subdivision (a), provides for dependency jurisdiction where a “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 the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm. For purposes of this subdivision, ‘serious physical harm’ does not include reasonable and age-appropriate spanking to the buttocks if there is no evidence of serious physical injury.”

father had not touched the minor who simply fell while running—we cannot say the court erred in dismissing the allegation under section 300, subdivision (a).

In any event, as the Department acknowledges, any error in dismissing the jurisdictional allegation under section 300, subdivision (a) would be prejudicial only if we reversed the court’s jurisdictional finding under section 300, subdivision (b). In light of our affirmance of that finding, any error by the court in this regard was necessarily harmless.

DISPOSITION

The adjudication order is affirmed.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.*

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