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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re ETHAN T. et al., Persons Coming  
Under the Juvenile Court Law.

B236729  
(Los Angeles County  
Super. Ct. No. CK86040)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Appellant,

v.

VANESSA M.,

Defendant and Appellant.

APPEALS from orders of the Superior Court of Los Angeles County. Terry Truong, Referee. Affirmed with directions.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Jeanette Cauble, Senior Deputy County Counsel, for Plaintiff and Appellant.

Tyna Thall Orren, under appointment by the Court of Appeal, for Defendant and Appellant.

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Vanessa M. (Mother) and the Los Angeles County Department of Children and Family Services (DCFS) appeal from the October 11, 2011 jurisdictional orders of the juvenile court. Daniel T. (Father), who is not married to Mother, does not appeal. The court adjudged minors Ethan T. and Angel T. dependents of the court pursuant to Welfare and Institutions Code section 300, subdivisions (b) (failure to protect) and (e) (severe physical abuse of child under five).<sup>1</sup> The court dismissed allegations under section 300, subdivision (a) (serious physical harm); other paragraphs alleged under section 300, subdivision (b); and allegations under section 300, subdivision (j) (abuse of sibling).

Mother challenges the sufficiency of the evidence to support the juvenile court's jurisdictional findings as to Ethan and Angel under section 300, subdivision (e). DCFS concedes that substantial evidence does not support the jurisdictional finding as to Ethan under section 300, subdivision (e), but argues that substantial evidence supports the finding as to Angel under section 300, subdivision (e). DCFS also contends substantial evidence does not support the court's order dismissing the allegations filed on behalf of Ethan and Angel pursuant to section 300, subdivisions (a) and (j).

We conclude that substantial evidence supports the jurisdictional finding that Angel was a person described in section 300, subdivision (e). As conceded, we conclude that substantial evidence does not support the jurisdictional finding that Ethan was a dependent of the juvenile court pursuant to section 300, subdivision (e), and order the finding stricken as to him. But because Ethan was adjudged a dependent under section 300, subdivision (b), and Mother does not claim on appeal that jurisdictional finding was improper, we affirm the court's finding of jurisdiction as to Ethan. We also conclude that because DCFS has asserted no prejudice to it based on the court's dismissal of the allegations under section 300, subdivisions (a) and (j) and we can affirm the court's finding of jurisdiction as to Ethan and Angel on other grounds, we need not address DCFS's argument that substantial evidence does not support the court's order dismissing the allegations filed on behalf of Ethan and Angel pursuant to section 300, subdivisions

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

(a) and (j). Accordingly, we order the court to modify the October 11, 2011 jurisdictional orders by striking the finding as to Ethan under section 300, subdivision (e). We affirm the jurisdictional orders as modified.

### **BACKGROUND**

On January 10, 2011, DCFS filed a petition pursuant to section 300, subdivisions (a), (b), and (j) on behalf of Ethan, born in 2009, and pursuant to section 300, subdivisions (a), (b), (e), and (j) on behalf of Angel, born in 2010. As amended and sustained, paragraph b-1 of the petition alleged under section 300, subdivision (b) as to both minors, and paragraph e-1 alleged under section 300, subdivision (e) as to both minors that on January 3, 2011, Father physically abused one-month-old Angel by grabbing, pushing, and pulling his legs, resulting in “mid-shaft left femur fracture and an avulsion fracture of the first lumbar spinal vertebrae L-1.” Angel was also diagnosed with healing “bucket handle fractures to [his] right and left distal tibias. The fractures were in different stages of healing.” Mother should have known of Father’s propensity to physically abuse Angel and failed to protect Angel. Such physical abuse by Father and Mother’s failure to protect Angel placed Angel and Ethan at risk of physical harm.

The juvenile court dismissed the following allegations: paragraph a-1, alleging under section 300, subdivision (a) and paragraph j-1, alleging under section 300, subdivision (j) that on January 3, 2011, Father physically abused Angel by grabbing, pushing, and pulling his legs, inflicting an acute “spiral” fracture to his left femur and healing “bucket handle fractures” to his left and right tibias; paragraph a-2, alleging under section 300, subdivision (a), paragraph b-2, alleging under section 300, subdivision (b), and paragraph j-2, alleging under section 300, subdivision (j) that on January 3, 2011, Angel was examined and hospitalized and found to have sustained a detrimental and endangering condition consisting of an acute “spiral” fracture of his left femur and healing “bucket handle” fractures to his right and left tibias, that Mother gave inconsistent explanations on how Angel sustained the injuries, which were consistent with child abuse, and that the injuries would not have occurred except as a result of deliberate, unreasonable, and neglectful acts by Mother and Father; paragraph b-3,

alleging under section 300, subdivision (b) and paragraph j-3, alleging under section 300, subdivision (j) that Angel was physically examined, hospitalized and found to have sustained a detrimental and endangering condition consisting of an acute “spiral” fracture of his left femur and healing “bucket handle” fractures to his right and left tibias, that he sustained swelling to his left leg, that the injuries are in different stages of healing, and that Mother and Father failed to seek timely, necessary medical care for Angel; and paragraph b-4, alleging under section 300, subdivision (b) that Mother has a history of illicit drug abuse, including the abuse of marijuana, which renders her incapable of providing the minors with regular care and supervision.

The events leading up to the filing of the petition were as follows. On January 3, 2011, Mother and maternal grandmother brought Angel to the emergency room because his leg was swollen. Dr. Lee examined Angel and determined that he had suffered a “spiral” fracture of his left femur. Mother’s explanation that she might “have rolled over on” Angel or that 14-month-old Ethan could have jumped on Angel was not consistent with Dr. Lee’s report that the injury could only have been a result of direct, strong force. Dr. Lee stated that the injury and Mother’s explanation were “suspicious.” Mother, who was then 20 years old, told police that Father, who was then 17 years old and the father of Ethan and Angel, was living with her in order to help care for Ethan and Angel, while Mother recovered from a gallstone attack. Mother denied that Angel had been dropped, fallen off a bed or couch, or been physically abused. She said that after she had returned from a doctor’s appointment that day, Father had shown her Angel’s swollen leg and she and maternal grandmother decided to seek immediate medical attention. Father, maternal grandmother, maternal aunt Angela, and maternal great aunt Yvette were interviewed by the police and denied knowing how Angel had been injured. Angel had only had contact with Mother, Father, maternal grandmother, maternal aunt Angela, Ethan, and Destin W., a child being raised by maternal grandmother.

On January 4, 2011, Father told DCFS that he recently had moved in with Mother at maternal grandmother’s house to help care for the minors. He stated that he cared for the minors during the day while Mother slept. Father stated that on January 3, 2011,

Mother and maternal grandmother left for a doctor's appointment at 2:00 p.m. Maternal aunt Angela, who also lived with Mother and maternal grandmother, was at the house caring for Destin. Father did not notice anything wrong with Angel's leg when he changed his diaper. At 7:30 p.m., Father noticed Angel's leg was swollen when he put clean clothes on Angel. Shortly thereafter, Mother and maternal grandmother came home from the doctor's appointment and Father reported the swollen leg to Mother, who then took Angel to the emergency room.

On January 4, 2011, Dr. Mark Massi, a forensic examiner, interviewed Mother, who stated that she had been in a relationship with Father, who was a full-time high school student, for three years. She told Dr. Massi that five days previously, Angel's foot had seemed "loose," and "wobbly." The next day he cried a lot and flinched when she touched his foot. Maternal grandmother told Mother that Angel was "fine," but maternal grandmother did not examine him herself. Angel's foot seemed fine the next day. Mother stated that on January 4, 2011, after she came home from a doctor's appointment, Father took her aside and said that he needed to talk to her. He told her that Angel's leg looked swollen. Mother examined Angel, determined that his leg was swollen, and she and maternal grandmother then took him to the emergency room. She also stated that Ethan had "pounced on" Angel to give him a kiss on January 1, 2011. She denied any falls by Angel or injuries to him.

On January 4, 2011, Dr. Massi reported to DCFS that both of Angel's shins near his ankle bone were fractured and at a more advanced healing stage, with "no explanation . . . provided." Child abuse was "strongly suspected." On January 5, 2011, when interviewed by DCFS about the fractures in the shins, Mother stated the fractures may have occurred when medical staff held Angel's ankle to take blood samples. She also stated that three days previously, Ethan had tried to lift himself up by "pushing on Angel," causing Angel to begin to cry. She said that Destin might be jealous of Angel and could have injured him. In addition, Mother said that three days previously, she had noticed that Angel's left foot was "limp" and that he did not react when she scratched the bottom of his foot. She had reported her concern to maternal grandmother, who told

her not to worry about it. The next day, Angel appeared to be fine. Maternal grandmother stated that Angel's shins might have been injured by medical staff when they were suctioning him at birth or when drawing blood. When asked on January 5, 2011, if Mother's explanations were credible, Dr. Massi stated that Angel could not have sustained the fractures of the shins as a result of blood being drawn from his heel, from being suctioned out at birth, from Mother rolling over on Angel, or Ethan "pushing off" on Angel. Angel and Ethan were placed in protective custody.

On January 6, 2011, Father told DCFS that on January 2 or 3, 2011, he had been awakened by Mother to watch Angel. Father "woke up with a 'shitty attitude,'" got Angel out of his bassinet and put him on the bed next to Mother as she slept. As Angel continued to be "'fussy,'" and kicked his legs around, Father "became frustrated and 'pushed back on his legs' and 'heard a snap.'" Father also said he had shared that information with a hospital social worker on January 5, 2011. He denied knowing how Angel had sustained fractures in his shins.

On February 23, 2011, Dr. Massi discovered a fracture to Angel's first lumbar vertebrae that was contemporaneous with the femur fracture. He stated that Angel had been physically abused on at least two separate occasions. On August 5, 2011, a letter from Dr. Thomas Grogan was filed with the juvenile court in which Dr. Grogan concluded that Angel had sustained three different fractures and a possible fourth fracture "consistent with an inflicted injury and may reflect non-accidental trauma." A letter filed on August 5, 2011, from Dr. Anthony Shaw concluded that while the femur fracture was compatible with Father's explanation that he tried to restrain Angel and heard a "'snap,'" the tibial fractures were not compatible with Mother's explanations that she may have rolled on Angel or that Ethan may have jumped on Angel. He stated that the tibial fractures were due to pulling and twisting forces at the ankle, could not have been self-inflicted, and a caregiver "could provide a likely scenario" to explain the injuries.

In the meantime, Mother tested negative for drugs, received a certificate of completion of parenting classes, and received referrals for individual counseling.

At the adjudication hearing on August 10, 2011, Mother stated Father had told her that Angel was kicking his legs up and down while Father was changing his diapers. Father then pushed up on Angel's leg and fractured it. Mother also stated that while she and Father were at the hospital and the "police started coming," Father said he thought he should admit that he had hurt Angel's shins "just so that everything will go away." Mother told him, "Don't say anything unless you did it, because it's not going to look right for you to lie about it." At the hospital later that evening, Father told Mother, "I think I did it." She testified that Father recently told her when they were "[o]utside in the lobby, outside of the court," that he had hurt Angel's shins by holding his ankles too tightly. At a team decision-making meeting in March, DCFS told Mother that Angel had suffered a spinal injury. When Father told her he had injured Angel's shins, Mother immediately told her lawyer, "my mom, the [team decision-making] meeting."

Dr. Anthony Shaw testified as a witness for Mother that his examination of Angel's medical records and X-rays indicated an acute fracture of the midportion of the shaft of the left femur and healing "bucket handle fractures" of the "ankle ends, the distal ends of both tibias, shin bones," that were two weeks old. He opined that the fractures on the shins were nonaccidental injuries caused by someone grasping and pulling and forcibly twisting Angel's ankles. The injuries to the shins also could have been caused by someone pulling on Angel's feet while Angel's body was restrained. He stated that although injuries to shins such as those sustained by Angel were not common, it was possible that a person could have applied the force necessary to cause the injuries without the intent to injure Angel. He also stated that at the time the injury to the shins was inflicted, a child would experience severe pain and would cry. The injury to the shins would not cause bruising, would not be "particularly painful" to the child after the initial severe pain, and is "often missed and picked up, the way this child's was, on a skeletal survey."

The juvenile court sustained as amended paragraph b-1, which alleged under section 300, subdivision (b) as to both minors, and paragraph e-1, which alleged under section 300, subdivision (e) as to both minors that on January 3, 2011, Father physically

abused one-month-old Angel by grabbing, pushing, and pulling his legs, resulting in “mid-shaft left femur fracture and an avulsion fracture of the first lumbar spinal vertebrae L-1.” Angel was also diagnosed with healing “bucket handle fractures to [his] right and left distal tibias. The fractures were in different stages of healing.” The sustained and amended allegations of the petition alleged that Mother should have known of Father’s propensity to physically abuse Angel and failed to protect Angel. The court stated that it had considered Mother’s testimony and the evidence. The court stated that the reports by DCFS did not mention Mother’s testimony that Father told her that he had injured Angel’s shins. The court concluded “there is no evidence to substantiate” Mother’s testimony regarding her reporting to DCFS Father’s conversations with her that he had injured Angel’s shins. The court determined that Mother knew or should have known of the abuse because she had been with Father for at least three years; she should have known that Father was capable of harming the minors; and Father’s problem with anger management was an ongoing behavior and “conduct [that] does not happen overnight.” The court noted that Father is young but that Mother “is partly to blame in this situation.” DCFS was ordered to provide reunification services. The minors were removed from Mother and Father and placed under the supervision of DCFS for suitable placement.

Mother and DCFS filed notices of appeal.

## **DISCUSSION**

### **A. Standard of Review**

The juvenile court’s jurisdictional finding that the minor is a person described in section 300 must be supported by a preponderance of the evidence. (§ 355; Cal. Rules of Court, rule 5.684(f).) “““When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] 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.]”” [Citation.] While substantial evidence may consist of



inferences, such inferences must rest on the evidence; inferences that are the result of speculation or conjecture cannot support a finding. [Citation.]” (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1258–1259.) “Weighing evidence, assessing credibility, and resolving conflicts in evidence and in the inferences to be drawn from evidence are the domain of the trial court, not the reviewing court.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

**B. There is substantial evidence to support the jurisdictional finding that Angel was a person described in section 300, subdivision (e) but not to support the jurisdictional finding that Ethan was a person described in section 300, subdivision (e)**

Mother does not challenge the sufficiency of the evidence to support the juvenile court’s jurisdictional findings as to Ethan and Angel under section 300, subdivision (b), but challenges the sufficiency of the evidence to support the court’s jurisdictional findings as to them under section 300, subdivision (e). DCFS concedes that substantial evidence does not support the jurisdictional finding as to Ethan under section 300, subdivision (e), but contends that substantial evidence supports the finding as to Angel under section 300, subdivision (e). As conceded, we conclude that substantial evidence does not support the jurisdictional finding as to Ethan under section 300, subdivision (e). But substantial evidence supports the finding as to Angel under section 300, subdivision (e).

Section 300, subdivision (e) provides that the juvenile court may adjudge a child to be a dependent child of the court if “[t]he child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, ‘severe physical abuse’ means . . . more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.” DCFS concedes that the evidence was insufficient to support the finding as to Ethan under section 300, subdivision (e) because there was no evidence that Ethan suffered severe physical harm.

We agree, but because Ethan was adjudged a dependent under section 300, subdivision (b)—and Mother does not claim on appeal that jurisdictional finding was improper—we affirm the court’s finding of jurisdiction as to Ethan. (*In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 451 [reviewing court can affirm juvenile court’s finding of jurisdiction over minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence].)

Mother further urges that substantial evidence does not support the finding as to Angel under section 300, subdivision (e) that Mother knew or reasonably should have known Angel was being abused because she told DCFS and medical personnel that she did not know how Angel’s femur fracture occurred; she immediately took Angel to the hospital when she noticed his leg was swollen; she was unaware of the shin fractures; and her expert opined that Angel’s healing fractures “could easily have gone unnoticed.” She also contends that the evidence did not support the finding that Mother knew or reasonably should have known that Father was the abuser because maternal grandmother, maternal aunt, and Destin also lived in the home and “there is no evidence that Angel only had contact with members of the household.”

*In re E. H.* (2003) 108 Cal.App.4th 659 is instructive. In that case, the three-month-old minor was taken to the doctor with a swollen right thigh and was hospitalized with multiple rib fractures, fractures of the wrist, femur, feet, hands, and hip that were in various stages of healing. The mother, the father, and the other occupants of the minor’s household denied that anyone in the household caused or knew of the minor’s injuries. The Court of Appeal concluded that jurisdiction properly was asserted under section 300, subdivision (e) because the mother or the father were either the perpetrators of the abuse on the minor or reasonably should have known the minor was being physically harmed by someone in the household because they lived with the minor, who was never alone; the minor cried whenever she was handled, yet the parents did not follow up on a diagnosis of likely colic; and the minor slept on the floor near a bed “occupied by a blind, developmentally delayed adult who habitually rolled out of bed and dragged herself around the apartment.” (*In re E. H.*, at p. 670.) The court determined that actual

knowledge that the minor was being abused by someone was not required under section 300, subdivision (e). Rather, circumstantial evidence supported the finding that the mother and father reasonably should have known of the abuse. “Otherwise, a family could stonewall the Department and its social workers concerning the origin of a child’s injuries and escape a jurisdictional finding under subdivision (e).” (*Ibid.*) Thus, “[t]he subdivision does not require the parent’s actual or constructive knowledge that the minor in fact suffered severe physical abuse within the statutory definition. Indeed, several of the listed injuries, such as bleeding (internal), internal swelling, and bone fracture, *may not be visible*; they may be discovered only after medical examination or testing. We do not believe the Legislature intended to so limit the reach of the statute.” ([*In re Joshua H.* (1993) 13 Cal.App.4th 1718,] 1729, italics added.)” (*In re E. H., supra*, 108 Cal.App.4th at p. 668.)

Here, the doctors stated that Angel’s injuries were nonaccidental and the result of inflicted injury. And the tibial fractures were older than the femur fracture. Further, Mother’s expert, Dr. Shaw, stated that the tibial fractures could not have been self-inflicted and that a caregiver “could provide a likely scenario” to explain the injuries. Mother tried to blame the hospital staff, Ethan, and Destin for Angel’s injuries, but the experts opined that Mother’s explanations were not consistent with Angel’s injuries. In addition, Angel had been in contact with only Mother, Father, maternal grandmother, maternal aunt Angela, Ethan and Destin; Mother had noticed that Angel’s foot was nonresponsive, loose and floppy, but did not follow up on that issue; and at the adjudication hearing, Mother stated for the first time that at the hospital and recently “[o]utside in the lobby, outside of the court,” Father had taken responsibility for hurting Angel’s shins. Thus, the juvenile court could have reasonably concluded that Mother was not a credible witness, had been covering up for Father, and reasonably should have known of the injuries to Angel.

Accordingly, we conclude the juvenile court did not err in determining that Angel was a dependent child under section 300, subdivision (e). In light of our conclusion, we need not address Mother’s contention that she was prejudiced by the court’s finding. As

conceded, we also conclude that substantial evidence does not support the finding as to Ethan under section 300, subdivision (e) because there was no evidence that Ethan suffered severe physical harm. But because jurisdiction was properly asserted over Ethan on other grounds, we affirm the juvenile court's finding of jurisdiction over him.

### **C. DCFS's appeal**

DCFS contends substantial evidence does not support the juvenile court's order dismissing the allegations filed on behalf of Ethan and Angel pursuant to section 300, subdivisions (a) and (j). Mother contends that DCFS was not prejudiced by the dismissal of its allegations under subdivisions (a) and (j) and there is no basis for reversing the order or directing that findings be added because there has been no miscarriage of justice, citing *In re Jesusa V.* (2004) 32 Cal.4th 588, 624, and article VI, section 13 of the California Constitution ["No judgment shall be set aside, or new trial granted, in any cause . . . for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice."]. We agree with Mother.

"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." (*In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 451.) Because Ethan and Angel were found to be dependents of the court on other grounds and DCFS has asserted no prejudice based on the juvenile court's dismissal of the section 300, subdivisions (a) and (j) allegations, we need not address DCFS's argument that substantial evidence does not support the court's order dismissing the allegations filed on behalf of Ethan and Angel pursuant to section 300, subdivisions (a) and (j).

### **DISPOSITION**

The juvenile court is ordered to modify the October 11, 2011 jurisdictional orders by striking the finding as to Ethan T. under Welfare and Institutions Code section 300, subdivision (e). In all other respects, the jurisdictional orders are affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

CHANEY, J.