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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re S.M., a Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

WALTER M.,

Defendant and Appellant.

B295104

(Los Angeles County
Super. Ct. No. 18CCJP07024A)

APPEAL from jurisdictional findings and a dispositional order of the Superior Court of Los Angeles County, Emma Castro, Referee. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant, Walter M.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Tracey M. Blount, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Appellant Walter M. (Father) appeals from the juvenile court's jurisdictional findings and dispositional order removing his seven-year-old daughter S.M. from his custody.¹ He contends the evidence was insufficient to support the juvenile court's finding of dependency jurisdiction under Welfare and Institutions Code section 300, subdivisions (a) and (b)(1).² We disagree with Father and affirm the court's jurisdictional findings and dispositional order.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Petition, Detention, Investigation*

On October 31, 2018, the Los Angeles Department of Children and Family Services (DCFS) filed a petition pursuant to section 300, subdivisions (a) and (b)(1), on behalf of S.M. (then age six), after having received a referral alleging physical abuse to the child. The petition alleged S.M. suffered physical abuse on September 3, 2018, when Father “wrapp[ed] a hot cord around the child's neck, resulting in the child sustaining abrasions and pain to the child's neck and chest” and in March 2017, when S.M. returned from a visit with Father with a bruise near her left eye. On prior occasions, Father struck S.M. with a belt and a shoe “on the child's bottom.” “Such physical abuse of the child was excessive and caused the child unreasonable pain and suffering” and “place[d] the child at-risk of serious physical harm, damage,

¹ Mother is not a party to the appeal.

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

and physical abuse.” DCFS also charged, based on the same factual allegations, that Father failed to adequately supervise and protect S.M. Finally, it was alleged that Father is a “current abuser” of marijuana which “render[ed] the father incapable of providing regular care” to a child of such young age who “requires constant care and supervision and the father’s substance abuse interferes with providing regular care and supervision.”

At the time of the November 1, 2018, detention hearing, S.M.’s parents were not living together. Mother had legal and physical custody of S.M. and Father had first, third, and fifth weekend visitation and Monday, Wednesday, and Friday weekday afternoon visitation. The parents had a multi-year history of conflict over the child.

The detention report advised the juvenile court that Mother brought S.M. to the emergency room on September 2, 2018 because she noticed abrasions on the child’s lower neck and chest area when S.M. returned from visiting her Father. S.M. told Mother it was poison ivy. Then she told her a tree branch had fallen on her at the park. Then she stated Father had put a cord/rope around her upper chest and throat and moved the rope back and forth causing the abrasions. When the doctor examined the abrasions, S.M. “began to shriek with pain.” The pain was calculated at level 10 on a scale of 0-10. No bones were broken and S.M. was discharged home with medication for pain. The final diagnosis was “[n]onaccidental trauma to child.”

On September 13, 2018, a DCFS social worker interviewed S.M. privately at Mother’s home. S.M. stated she felt “a little bit” safe with her father. S.M. told the social worker Father had asked her to retrieve the cord from under the bed. The cord was hot from charging the television. When S.M. did not retrieve the

cord, Father got upset, grabbed the cord, and wrapped it around her neck two times for about an hour. She received a burn mark because of the cord. She also told the social worker she enjoyed playing with Father's telephone and going to the park.

Eleven days after that interview, on September 24, 2018, the same social worker interviewed Father, who denied wrapping a cord around S.M.'s chest and neck area. He denied that S.M. sustained injuries at his home. He stated he noticed a rash in that area and texted Mother to ask about rash medication. He showed the social worker a video in which S.M. said she sustained abrasions while in Mother's care. He stated his belief that Mother was coaching the child to accuse him of physical abuse. The social worker informed Father that the child's disclosures of physical abuse were consistent so there would be further investigation.

On October 16, 2018, S.M. underwent a forensic interview at Harbor UCLA. The social worker overheard S.M. again report that her father had wrapped a hot cord around her neck, causing marks. The Forensic Report itself noted that S.M. had repeated her allegations about Father and that he had told her not to say anything about the incident. S.M. also reported that on "more than one" prior occasion, Father had hit her on the bottom with a belt and shoe.

After the forensic interview, the social worker asked Father if he would agree to a safety plan "for just a few days and not have his visitation with his daughter for the weekend." Father said he could not agree because Mother was building a case against him to use in their custody case. He did agree to a one-hour visit monitored by the social worker who observed that

Father and S.M. were very affectionate and comfortable with one another.

Because Father would not agree to a safety plan, DCFS decided to detain SM and recommend release to Mother only.

The juvenile court considered the detention and forensic reports at the detention hearing and detained S.M. from Father, permitting two hours visitation two times per week.

B. *Jurisdiction and Disposition*

The jurisdictional/disposition hearing occurred on January 10, 2019. Both parents appeared and testified as did S.M. After clearly and confidently telling the court she knew the difference between the truth and a lie, S.M. testified she could not recall the circumstances surrounding the incident with the court; did not recall how marks appeared on her neck; said Father put Vasoline on the marks; blamed her cousin Queenie for punching her in the eye while they played at Father's home; denied being hit by a shoe on her bottom; and could not explain why she previously told Mother that Father had hit her in the eye. She testified he hit her once with a plastic belt. S.M. was unresponsive when asked what was true and what was false. She acknowledged telling "my worker" and Mother that Father had hurt her with the cord and said she did not know why she told them that he had hurt her.

Father denied the allegations about the cord; stated he thought the marks on S.M. were a rash; denied telling the social worker he had a doctor's note confirming the marks were a rash; admitting striking his daughter with a belt once and never again; and confirmed S.M. was punched in the eye while he was elsewhere in the house. He believed Mother was orchestrating the false accusations against him.

Mother testified about taking S.M. to the hospital and that S.M. had twice retracted her accusations about Father.

The juvenile court sustained the petition under subdivisions (a) and (b)(1), finding true the allegation that S.M. had suffered serious physical injury from the hot cord wrapped around her neck. The court expressly found Mother's testimony credible. The court "did not find the father to be as credible. . . . So the father's credibility is not high in the court's opinion based on his testimony today." The court struck the allegations that Father used marijuana and struck S.M. with a belt.

Father timely appealed.

DISCUSSION

Father contends substantial evidence does not support the juvenile court's jurisdictional and dispositional findings and order as to S.M. under section 300. We disagree.

A. *Standard of Review*

In reviewing a challenge to the sufficiency of the evidence supporting jurisdictional findings and related dispositional orders, we "consider the entire record to determine whether substantial evidence supports the juvenile court's findings." (*In re T.V.* (2013) 217 Cal.App.4th 126, 133; accord, *In re I.J.* (2013) 56 Cal.4th 766, 773.) "Substantial evidence is evidence that is 'reasonable, credible, and of solid value'; such that a reasonable trier of fact could make such findings." (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199.)

In making our determination whether substantial evidence supports the jurisdictional findings, " "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." ' ' ' (In re I.J., *supra*, 56 Cal.4th at p. 773; see In re Alexis E. (2009) 171 Cal.App.4th 438, 451.)

B. *Applicable Law*

Section 300, subdivision (a), provides for juvenile court jurisdiction over a child if "[t]he 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." "[T]he use of the disjunctive 'or' demonstrates that a showing of prior abuse and harm is sufficient, standing alone, to establish dependency jurisdiction under" section 300, subdivision (a). (In re J.K. (2009) 174 Cal.App.4th 1426, 1435, fn. omitted.) In addition, "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." (§ 300, subd. (a); accord, In re Jonathan B. (2015) 235 Cal.App.4th 115, 118; see In re Isabella F. (2014) 226 Cal.App.4th 128, 139 ["section 300, subdivision (a) may apply when a minor suffers less serious injuries but there is a history of repeated abuse" and where "there is a substantial risk the child will suffer serious physical harm in the future"].)

Section 300, subdivision (b)(1), authorizes a juvenile court to exercise dependency jurisdiction over a child 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, or . . . by the inability of the parent . . . to provide regular care for the child due to the parent’s . . . mental illness, developmental disability, or substance abuse.” (§ 300, subd. (b)(1).) A jurisdictional finding under section 300, subdivision (b)(1), requires DCFS to demonstrate the following three elements by a preponderance of the evidence: (1) neglectful conduct, failure, or inability by the parent; (2) causation; and (3) serious physical harm or illness or a substantial risk of serious physical harm or illness. (*In re Joaquin C.* (2017) 15 Cal.App.5th 537, 561; see also *In re R.T.* (2017) 3 Cal.5th 622, 624.)

The court need not wait until a child is seriously harmed or injured to assume jurisdiction and take the steps necessary to protect the child, as the focus of the statute is on averting harm to the child. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

When a section 300 petition alleges multiple subdivisions, “‘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 re I.J.*, *supra*, 56 Cal.4th at p. 773.)

C. *Analysis*

Here, Father makes two arguments: first, there is insufficient evidence that S.M. suffered serious harm; and, second, if she did suffer serious harm, it was not at his hands.

1. Serious physical harm

We reject Father’s first argument. Although the statute does not define what constitutes “serious physical harm” under section 300, subdivision (a), it “has withstood a void-for-vagueness challenge because the term has a sufficiently well-established meaning and is no less specific than the phrase ‘great bodily injury.’” (*In re Isabella F.*, *supra*, 226 Cal.App. 4th at p. 138; see also *In re Mariah T.* (2008) 159 Cal.App.4th 428, 436-437.) As the court reiterated, “‘Although there may be an “I know it when I see it” component to this factual determination [of what constitutes “serious physical harm”], as with the term “great bodily injury” we believe that parents of common intelligence can discern what injuries fall within its reach.’” (*In re Isabella F.*, at pp. 138–139; *In re Mariah T.*, at p. 438.)

The evidence in the record substantially supports the court’s findings. The doctors who examined S.M. concluded the marks were the result of non-accidental trauma and their examination of S.M. caused her to “shriek with pain.” The medical records received into evidence note a pain level of 10 on a scale of 0 to 10. As the juvenile court found, “[W]hen the doctor examined the child’s abrasions, the child began to shriek with pain. That is not a small scrape, and that is not a bruise. That is a serious injury to a child caused nonaccidentally while the child was in the father’s care, based on the evidence before the court.” We agree with the juvenile court this was serious physical harm warranting intervention under section 300.

2. Father's responsibility

As to Father's involvement, S.M. was initially quite consistent in telling the forensic evaluator, hospital staff, the social worker, and her mother (whom the court found credible) that Father had hurt her with the cord. She demonstrated for the hospital medical staff how Father rubbed the cord across her chest. Indeed, the juvenile court told Father, "The injuries occurred on your watch, sir, and I have concerns about that. I have concerns about your care and supervision of the child. . . . You didn't take her to the doctor. You put Vaseline after she came out of the bathtub. It wasn't even Vaseline directed at the abrasions. You told me under oath that every time you shower or bathe the child, you always put Vaseline as a lubricant. You were concerned enough to send the mother a text that said, 'What medications are you using for her rash?' And yet you don't even go to your neighborhood drugstore to get her any kind of cream or lubricant to address her injury. So that was very concerning to me." We could not say it better than the juvenile court.

Father points out that S.M. gave several versions of the event with the cord, later retracting the statements she made right after the alleged incident. The juvenile court duly noted and commented upon S.M.'s vacillation, making these insightful findings:

"I did find [S.M.] to be, as has been described in her earlier testimony, to be engaged. She was presented as an intelligent six[-], almost seven-year-old child. She was found competent by the court after inquiry. However, during the numerous questions by the court regarding why did she tell – why did she testify that it wasn't true what she had initially reported, regarding her father causing the injuries with the court, each time I asked her

that question, she appeared very anxious, she hesitated, she looked down, she engaged in hand wringing, . . . she was fidgety, and she didn't answer the question, and I asked her at least three separate times. She answered almost every other question that was asked of her. I'm not sure why she recanted. I'm not sure what is going on. But it was clear to the court, based on my observation of her, that she [is] very worried about something, and it's about something that has to do with the allegations in the petition and the dynamics that are going on between mother and father and the child [¶] . . . [¶] Children in our dependency proceedings are usually entrusted with the most truthful, credible reporting of what has occurred in the first interviews. She has been interviewed multiple times, including today. The inquiry was long and repeated, even by myself. Over and over, why did you—why did you change your story about what happened? And even though she is almost seven-years-old, her entire body language changed when the court went down that line of inquiry. So the court does believe that when she came home and she told her mother, upon coming into the home, that it was her dad that caused the injury, the court needs to give that a lot of weight and credibility.”

“It is axiomatic that an appellate court defers to the trier of fact . . . and has no power to judge the effect or value of, or to weigh the evidence; to consider the credibility of witnesses; or to resolve conflicts in, or make inferences or deductions from the evidence. We review a cold record and, unlike a trial court, have no opportunity to observe the appearance and demeanor of the witnesses.” (*In re Sheila B.*, *supra*, 19 Cal.App.4th at p. 199.) And, the testimony of a single witness is sufficient to uphold a judgment. (*Id.*, at p. 200.) The juvenile court was in the best

position, after observing S.M.'s testimony and demeanor, to determine which version of events was credible, and it adopted her initial statements. We find no reason to disturb the juvenile court's ruling. Like the juvenile court, we find the evidence substantially supports the conclusion that Father caused S.M.'s injury.

DISPOSITION

The juvenile court's jurisdictional findings and dispositional order are affirmed.

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STRATTON, J.

We concur:

BIGELOW, P. J.

WILEY, J.