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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re Francisco B. et al., Persons Coming
Under the Juvenile Court Law.

B242794
(Los Angeles County
Super. Ct. No. CK92855)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

FRANCISCO B.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County.

Robert L. Stevenson, Juvenile Court Referee. Affirmed.

Matthew Ivan Thue, under appointment by the Court of Appeal, for
Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County
Counsel, and Kimberly A. Roura, Deputy County Counsel, for Plaintiff and Respondent.

Francisco B. (Father) and Adriana T. (Mother) have two sons, Francisco B. (born February 1999, hereinafter referred to as Frankie) and Adrian B. (born March 2000). Father appeals from the juvenile's court orders sustaining allegations in the juvenile dependency petition under Welfare and Institutions Code section 300.¹ We affirm.

FACTUAL & PROCEDURAL BACKGROUND

Father and Mother were never married. In March 2012, Mother, Frankie (then 13) and Adrian (then 12) were living with Mother's boyfriend, R.² Frankie and Adrian had not seen Father in two years.

In March 2012, after Father contacted Frankie and Adrian, Mother took them to see a psychologist, Dr. Judy Ho. After meeting with the children and Mother separately, and as a family, Dr. Ho informed the Department of Children and Family Services (the Department) that Frankie and Adrian had revealed emotional and physical abuse by Father.

Shortly thereafter, a social worker visited the family. Mother told the social worker she had physical custody of the children but she shared legal custody with Father. The children had not wanted to see Father for three years because they were afraid of him. In the past he had been physically and verbally abusive to Mother and the children. He had kicked her and had held her in a chokehold while she was pregnant with Frankie. He owned guns and had threatened the children by saying he could hurt the family. Mother revealed that a few months earlier, Frankie had contacted Father on Facebook. Frankie told Mother he did not want to see Father, and Mother conveyed this to Father by text message. Father responded by sending a text message cursing her. In February 2012, Father contacted the children's school and said he was coming to remove them. The children became afraid and Adrian took a butter knife to bed to protect himself.

¹ All subsequent statutory references shall be to the Welfare and Institutions Code unless otherwise indicated.

² Mother and R. have a son, Julien T., who is not the subject of this petition.

Mother then took the children to see Dr. Ho. Dr. Ho told her that she needed to contact the child abuse hotline because of what the children revealed.

R. told the social worker the children were afraid of Father and had told him Father had weapons and had threatened to harm Mother's family before.

The social worker interviewed each of the children separately. Frankie said Father had verbally abused the children and Mother in the past. Father had showed them his gun collection and threatened Frankie. Father used to hit them, causing bruises and cuts. Father once pulled Frankie's pants down and hit him on the buttocks and once gave him a bloody nose. Frankie said he used to be scared and have nightmares when he was younger. Frankie said that he contacted Father on Facebook and Father found out his school and home address. Frankie said he was not afraid and did not mind visiting with Father because he was old enough to handle the punches, but he was afraid for his family.

Adrian said Father would hit them across the face or push him against the wall. He was worried about his family. Father called him in January 2012, and Adrian returned the call because he wanted to know if Father had changed. He did not want to see Father unless Father changed and got rid of his weapons. He admitted putting a knife under his pillow for self-defense. He was concerned for the social worker and told her not to visit Father alone because Father had gotten into fights with strangers before.

Both children reported that they had fun when they visited their Father two years ago, but he became more abusive the longer they stayed with him.

Dr. Ho contacted the Department. She wrote letters to the Department and juvenile court in March 2012, reporting that Adrian was displaying aggressive tendencies and Frankie was displaying depressive symptoms. Both were stressed and fearful. She recommended against requiring them to see Father.

The principal of the children's school reported that a man claiming to be their father called the school on February 9, 2012, and stated he was coming to see the children. He called again the next day, but they were not at school that day. Father said he would show up the following day, but did not, and did not call again.

The social worker met with Father on March 26, 2012. Father said he was in law enforcement in 2009 but was released from his position and was now an independent contract security guard. He said he was the victim of domestic violence by Mother. He withheld consent from the applications for the boys' passports because he believed they were a flight risk. He admitted only to hitting the children with an open hand on their bottoms but left no marks or bruises. He denied making threats against the family and denied physically abusing them. He said he contacted Mother for a visit and Mother told him that the children were afraid of him. He contacted the school to verify the children were enrolled but denied saying he was going to come get the children.

The court issued an order temporarily removing the children from Father's custody on March 28, 2012.

The Department filed a petition on April 3, 2012, pursuant to section 300, subdivisions (a), (b), (c), and (j), alleging physical and emotional abuse and domestic violence between Mother and Father. At the detention hearing, the court issued an order prohibiting Father from coming within 100 yards of their family, home, or school. Father was allowed monitored visits once a week.

The social worker reported in May 2012 that Father denied he committed any incidents of domestic violence and instead claimed Mother was the perpetrator of approximately 10 to 15 incidents of domestic violence. He said he needed time "to make up for the period where the kids were kept from me." He said he was willing to participate in any programs and services which would promote reunification. Both children stated they would feel safer if they remained in Mother's custody. They had refused to attend scheduled visits with Father. Mother reported that the children began exercising and doing push-ups, asking R. for instructions on how to fight.

Dr. Ho met with the children again in May 2012 for two sessions each. She reiterated that they become "stressed, fearful and either displaying aggressive tendencies (Adrian) or depressive symptoms ([Frankie])" when they discussed seeing Father again. She recommended the boys should have no contact with Father and that discussions

about visitation with Father be limited. She also recommended the children continue therapy for several months.

In May, Father asked for visitation and the court ordered that he could visit in a therapeutic setting if Dr. Ho was willing to monitor. Dr. Ho refused to monitor visits because she had “grave concerns” and believed visitation with Father was “therapeutically contraindicated.” Father obtained his own therapist and a visit was scheduled for July 2, 2012, but the children refused to attend.

On July 6, 2012, an adjudication hearing was held. The Department agreed to strike the allegations in the petitions regarding Mother’s failure to protect and domestic violence between Mother and Father. Frankie, then 13 years old, testified in chambers. He said he didn’t want to see Father unless he was forced to and that Father was “generous and kind but verbally abusive.” He acknowledged he had sat with his Father at a visit and that his Father had hugged him. When he contacted his Father on Facebook, it had been three years since he had last talked to him. He clarified on cross-examination that Father had located him through Facebook and sent him a request. He accepted the request, and then found out Father was coming to his school, so he changed his name on Facebook and “defriended” him.

Frankie described an incident which had occurred three years earlier. When Frankie had gotten detention at school for not wearing a belt, Father grabbed him “by the neck, like a dog, and he threw me in the car, and he put me in a room almost the whole day.” Father had refused to sign papers to allow him to apply for a passport because he said Frankie “wasn’t worthy.” When Frankie was 8, 9, or 10, Father threatened him, saying that if he tried to hide he would hurt Frankie’s family. He remembered Father saying he was going to kill Mother’s relatives.

Frankie said that sometimes Father would hit him with his hand or a belt, he would leave a red mark or a bruise, which would last for two days. He said Father hit him more than five times with a belt, it was on his buttocks, but did not leave a mark every time. Father had hit him across the face at least five times.

Father also threatened to kill Frankie and Adrian three times. He told Frankie that Father threatened to throw him against the wall. Frankie testified he was scared of Father, and felt that Father would call him names like “beaner” or “schmuck” or say hurtful words. Frankie said he stayed quiet when he was around Father because he didn’t want to have to deal with violence. Frankie also testified that Father had come to the house unannounced and he would tell relatives to tell Father he was not at home.

Neither Mother, Adrian nor Father testified at the hearing.

The court found the children to be credible and consistent. The court struck certain allegations from the petition³, but sustained others under section 300, subdivisions (a), (b), (c), and (j), finding a substantial risk of detriment to the children if they were returned to Father’s custody.

The court issued an order officially removing the children from Father’s custody. It allowed Father to text message the children and if that was successful, then he would be allowed monitored visitations.

CONTENTIONS ON APPEAL

Father contends there was insufficient evidence to support the jurisdictional findings. First, he contends there was only evidence of spanking and bruising, which was not sufficient to establish physical abuse. Next he contends there was no evidence of severe emotional damage, since the psychologist had only conducted cursory examinations of the children. Then he contends that since there was no basis for the counts alleged under section 300, subdivisions (a), (b), and (c), there could be no basis for the allegation of sibling abuse under section 300, subdivision (j). Finally, he contends there was no evidence of a current risk of serious harm.

³ The court struck the allegation that Father caused Frankie to have a nosebleed because Frankie did not testify about it.

DISCUSSION

1. Standard of review

The Department bears the burden of proving by a preponderance of evidence the juvenile court has jurisdiction. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.)

On appeal, we review the jurisdictional findings for substantial evidence. (*In re B.T.* (2011) 193 Cal.App.4th 685, 691; *In re David M.* (2005) 134 Cal.App.4th 822, 828.) We defer to the juvenile court on all issues of credibility (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393) and resolve all conflicts and draw all reasonable inferences in support of the judgment. (*In re Veronica G., supra*, 157 Cal.App.4th at p. 185.)

Substantial evidence must be reasonable, credible and of solid value. A mere scintilla of evidence is not enough. (*In re B.T., supra*, 193 Cal.App.4th at p. 691.) The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record. (*In re Savannah M., supra*, 131 Cal.App.4th at pp. 1393-1394.)

2. Physical Abuse

Subdivision (a) of section 300 permits the court to adjudge a child a dependent where: “The 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 the purposes of this subdivision, a court may find there is 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 which 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 where there is no evidence of serious physical injury.”

Father contends that since Frankie testified he did not sustain deep bruises or broken skin, it did not rise to the level of serious physical harm.

Frankie said Father slapped and hit him with belts, that he grabbed him by the neck, and Frankie suffered bruises and red marks which lasted two days. The children

were between four and ten years old at the time. Frankie reported abuse starting at five and continuing until 10.

Father cites *In re Mariah T.* (2008) 159 Cal.App.4th 428 for the proposition that the red marks left by a belt did not constitute evidence of serious physical harm. In *Mariah T.*, the mother used a belt which left a red line on the eight-year-old child's back, and purple and yellow marks on the three-year-old child. (*Id.* at p. 438.) Contrary to Father's assertion, the court stated only that "Conceding for discussion's sake only that the line on [the eight-year-old child's] back did not amount to serious physical harm, we believe there was sufficient evidence that [the three-year-old] suffered serious physical harm." (*Id.* at p. 438.) With respect to the eight-year-old, it held that evidence that the mother was using a belt on several occasions, threatened her, then denied and minimized what she had done, was sufficient to support allegations of substantial risk of future serious physical harm abuse. (*Id.* at p. 439.)

Here, the children reported Father had hit them multiple times when they were younger than ten years old, leaving red marks which lasted a few days. Adrian testified that Father pushed him against a wall and Frankie described being grabbed by the neck like a dog. The evidence amply supported the court's jurisdictional findings pursuant to section 300, subdivision (a).

3. *Emotional Abuse*

Section 300, subdivision (c) provides that the juvenile court may assume jurisdiction if the 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."

Father also contends that the emotional damage was not enough to reach the level of seriousness required by section 300, subdivision (c). First, he contends that Dr. Ho did not meet with the children long enough or often enough to support the conclusions in her report. Secondly, he contends there was only evidence of nightmares, which are not per se abnormal, citing *In re Brison C.* (2000) 81 Cal.App.4th 1373.)

Father's contentions are meritless. The evidence reveals that Dr. Ho met with the children approximately three times each before July 2012, and was continuing to provide therapy. She felt that the children exhibited such clear symptoms of emotional damage that she did not think they should be forced to visit Father at all.

In *Brison C.*, during a contentious custody dispute between his parents, the 9-year-old child was placed first in a Youth Center and moved to a foster home. He mentioned having nightmares during the intake interview at the youth center, but there was no other mention. The minor reported he was afraid of his father, and reported physical and verbal abuse. These reports were later deemed unfounded. The minor threatened to commit suicide if placed in the custody of his father. But reports showed that the child had performed well at school and displayed no serious behavioral problems and the court concluded that the conflict between his parents was the cause of his emotional distress. The parents did not suffer from mental illness, agreed to counseling and parenting classes, and expressed a willingness to change their behavior. (*In re Brison C.*, *supra*, 81 Cal.App.4th at p. 1381.)

This case is not similar to *Brison C.* Here, the children testified to repeated incidents of physical abuse and threats. They had feared Father for years. The emotional toll on the children was clear from the evidence. Father belittled the children by calling them names. He had threatened to harm them with guns. Adrian took a knife to bed, feeling like he needed to protect himself. Frankie, knowing that he would be hit, said he could take the abuse. Moreover, Father did not show any willingness to change his behavior; in fact he attempts to minimize it or blame it on Mother. The children's response to Father speaks volumes. They are so afraid of him that they felt the need to protect themselves with weapons, and to warn others about his violent tendencies. They viewed violence as a foregone conclusion when Father was in their lives. These are indicators of how much emotional abuse they have suffered. Sufficient evidence supported the court's finding of emotional abuse.

4. *Current Risk of Harm*

Section 300, subdivision (a) requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future.

Father contends there was no evidence he would try to harm the children in the future. He claims he made no additional effort to contact the children at school, he has no criminal history and no history with child protective services, and the children were not forced to see him against their wishes. Father argues in his reply brief that his recent contacts only amounted to reasonable attempts to enforce an existing custody order.

Contrary to his contentions, Father showed a clear intent to force the children into seeing him. He had recently begun to contact the children over the internet. He called the school and announced his intention to come pick them up. He responded angrily to Mother when she conveyed Frankie's fears to him. The children were frightened of him because he had responded violently and threatened them in the past. Father clearly had the capacity to seek the children out and did not display an intention of working with Mother or the children's therapist to negotiate a smooth reentry in their lives. There was no evidence at all that he had changed his personality or had overcome any anger management during the time that he had been separated from the children.

Father cites the case of *In re James R.* (2009) 176 Cal.App.4th 129 in support of his contention that there was no evidence of a current risk of harm. However in *James R.*, there was no evidence that the parents had abused or neglected the children in the past. The mother had attempted suicide and had been treated for depression, and was hospitalized after she ingested eight ibuprofen tablets with a few beers. (*Id.* at pp. 131-132.) The children lived with both parents. Both parents were devoted to the children, bonded with the children and were meeting all their needs. (*Id.* at p. 137.)

James R. is inapposite. Here, there was no showing that Father was bonded with the children; even after the court ordered visitation, they refused to see him. The psychologist recommended against visitation. Father had exhibited violent tendencies in the past and had threatened violence against the children and Mother. The juvenile court could reasonably find that there was a current risk of harm to both boys.

5. *Welfare and Institutions Code section 300, Subdivisions (b) and (j)*

Father contends because there was no evidence of jurisdiction under section 300, subdivisions (a), (b), or (c), there could be no risk to a sibling under section 300, subdivision (j). Because we find ample evidence to support the section 300, subdivisions (a) and (c) findings, the allegation of jurisdiction of subdivision (j) was properly sustained.

In any event, because substantial evidence supports dependency court jurisdiction under subdivisions (a) and (c), we need not resolve whether the court erred in sustaining allegations under any other subdivisions. Even a single basis for jurisdiction is sufficient to uphold the juvenile court's order. (See *In re Dirk S.* (1993) 14 Cal.App.4th 1037, 1045.)

DISPOSITION

The findings and orders of the juvenile court are affirmed.

WOODS, Acting P. J.

We concur:

ZELON, J.

JACKSON, J.