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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re V.D., a Person Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

A.A.,
Defendant and Appellant.

B290404

(Los Angeles County
Super. Ct. No. 17CCJP02043)

APPEAL from orders of the Superior Court of Los Angeles
County. Michael E. Whitaker, Judge. Affirmed.

Christine E. Johnson, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel and Kimberly Roura, Deputy County
Counsel, for Plaintiff and Respondent.

Mother A.A. appeals the jurisdiction and disposition findings regarding her youngest child, who was declared dependent and removed from her home based on sibling abuse. Mother argues there is insufficient evidence of: (1) risk of harm to the child justifying jurisdiction; or (2) an inability to assure his safety in the home justifying removal. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

We are here concerned with the youngest of parents' four children.¹ The two eldest children were the siblings whose abuse by mother prompted the court to find the youngest was at risk.² The eldest children are Roberto, born in 2012; and Anna, born in 2013. The youngest, Victor, was born in 2015.

Although the petition with respect to Victor was filed in November 2017, the proceedings in this case actually began in April 2014, before Victor was born.

1. *The 2014 Dependency Proceedings Regarding Roberto and Anna*

In April 2014, father R.D. had an angry outburst in front of the children. He screamed obscenities at infant Anna, and threw a baby gate in Roberto and Anna's presence. The parents admitted that father had an anger problem which was triggered by the children's crying. The Department of Children and Family Services (DCFS) filed a petition to declare the children dependent, and Roberto and Anna were detained from father.

¹ To protect the minors' privacy, we use pseudonyms instead of their actual names.

² The parents' third child was apparently detained in the hospital when he was born. Mother and father's parental rights to that child were terminated before his third birthday, and he is not at issue in this case.

Thereafter, it was discovered that mother was allowing father back in the home, even though he was not permitted to be there. There were also “concerns for mother’s ability to care for [Anna and Roberto] due to her lack of bonding to the children.” Roberto and Anna were removed from the home in July 2014. Reunification services were provided.

Mother and father eventually reunified with Roberto and Anna, but it took a great deal of time. Anna returned to mother’s home on March 27, 2017. Roberto returned on May 23, 2017, and father was permitted to return to the home at that date as well.

2. *The October and November 2017 Abuse*

In October 2017, less than six months after mother and father reunified with Roberto and Anna, five-year-old Roberto and four-year-old Anna began showing up at school with suspicious injuries and reporting abuse. Roberto has a mild intellectual disability which limited his ability to provide detailed information.

A. *The October 17 Bruise on Roberto’s Head*

On October 17, Roberto complained of a headache. His teacher saw a bump on his head, and he explained, “‘[m]ommy hurt me.’” The school nurse confirmed the bump on his forehead as well as another bump on the back of his head and bruises on his arms.

The following day, a DCFS social worker came to Roberto’s school to investigate. At that time, Roberto claimed that Anna had caused the bruise on his forehead and Victor had caused the mark on his arm.

That social worker spoke with Anna, who did not know about any injuries to Roberto.

Mother was interviewed; she suspected that Anna caused the bruise to Roberto's head because Anna hit Roberto with toys all the time.

B. *The Simultaneous Discovery of Injuries to Anna*

When the social worker interviewed Anna, Anna had a bruise under her left eye. She claimed she caused the bruise by sleeping on it and denied that her parents had caused it. However, when asked if her mother ever struck Roberto in the face, she volunteered, “‘[m]ommy hit me in the nose mouth was bleeding.’”

Mother explained that the bruise on Anna's eye had been caused by another child; mother had been babysitting the other child and saw that child strike Anna in the face while they were playing.

C. *The October 27 Report of Pain by Roberto*

On October 27, Roberto twice reported (at school) that his “[p]ee pee” hurt. He was sent to the school nurse, who found nothing wrong and sent him back to class. At this point, no abuse was suspected, but a report was made to DCFS.

D. *The October 30 Injuries to Roberto's Eye and Neck*

On October 30, Roberto was quiet and withdrawn when he arrived at school. His teacher noticed redness under his right eye, which she believed was a developing black eye. Roberto also had a red mark on his neck. He initially would not say what happened. The social worker returned to the school that day to investigate. When asked about the mark on his eye, Roberto said mother did it, and demonstrated by grabbing his eye with force. He said he was scared of mother and added, “‘[h]urt, it hurt.’” When asked if father was there when mother did it, he agreed. As to the mark on his neck, Roberto said, “‘mommy go this,’” and

demonstrated choking with both hands. When asked how he felt when it happened, he breathed in and out rapidly. He was scared to go home; he was specifically afraid of mother. When asked what mother does when he does not listen, he again wrapped his hands around his neck.

The social worker interviewed Anna at her school. She knew about the mark on Roberto's face and said that Victor had caused it by hitting him with a cup. She did not know about the mark on his neck.

The social worker interviewed mother at the home. Mother said that Victor had hit Roberto on the face with a cup. She had no explanation for the mark on Roberto's neck. She denied that she or father had grabbed the child, and said, " 'This is starting to get really ridiculous. I can't keep track of every mark or bruise. If the school is going to continue to call these in on me then I'm going to take him out of that school.' " ³

Father was also interviewed and he, too, said that Victor had hit Roberto in the face with a sippy cup. When asked which side of Roberto's face was struck, father hesitated and then identified the left side, which was not the side of Roberto's injury. Father had no explanation for the injury to Roberto's neck, but volunteered that sometimes Anna punches him, so that might have been the cause.

The social worker spoke with Roberto when he returned home from school. Roberto went into his bedroom, which smelled of urine. The social worker asked what happened, and Roberto

³ Shortly thereafter, mother sent a note to Roberto's teacher "demanding the teacher stop calling in referrals" and threatening to remove Roberto from the school if the teacher did not stop making referrals.

grabbed his private area and said, “ ‘[p]ee pee. It hurt.’ ” Father changed Roberto’s clothes and the social worker saw a purple bruise on Roberto’s collar bone; neither parent could explain the bruise.

E. *The November 17 Pain in Anna’s Arm*

On November 17, Anna was observed rubbing her left forearm with her right hand. When asked what happened, Anna explained, “mommy hit me with my toy.”

3. *The November 27, 2017 Petitions*

DCFS filed two petitions on November 27, 2017. The first was a subsequent petition in the dependency proceeding regarding Roberto and Anna. As we have noted, that petition is not at issue in this appeal. DCFS also filed a petition alleging that Victor was dependent.

The petition regarding Victor alleged that Victor was described by Welfare and Institutions Code section 300, subdivisions (a) [physical abuse], (b) [neglect], and (j) [sibling abuse or neglect], due to mother’s recent physical abuse of Roberto and Anna, and father’s failure to protect them.⁴

Victor was detained; the parents were granted separate monitored visitation. Roberto and Anna were also detained in a different foster home.

4. *Roberto and Anna Disclose Further Abuse*

Between the late November 2017 detention hearing and the April 12, 2018 jurisdiction hearing, Roberto and Anna disclosed

⁴ All further undesignated statutory references are to the Welfare and Institutions Code. The petition included further allegations, based on the issues which had supported the April 2014 petition regarding Roberto and Anna, but the dependency court found those allegations not established in this proceeding.

further abuse by mother to their foster parents, therapist, and social worker.

Anna claimed that mother struck her on the nose and she was bleeding; Roberto confirmed it.

In foster care, Roberto demonstrated a shower phobia. First Anna, and eventually, Roberto, disclosed that when Roberto misbehaved, mother would put him in a cold or scalding hot shower. Roberto specifically indicated the shower would burn his back and private parts.

Anna told her therapist that mother had hit her with a belt on her head, causing it to bleed.⁵

With respect to the children's further disclosures, mother speculated that the disclosures related to abuse the children must have suffered with their former foster mother. Father believed Roberto never disclosed abuse; instead, Roberto's teacher was falsifying the allegations. Father believed Anna's allegations were also lies. Alternatively, father suggested the children may have been abused in their former foster home, and were referring to incidents that happened there.

⁵ The children's therapist reported to DCFS Roberto's disclosure of the hot showers and Anna's disclosure that mother hit her on the head with a belt. These statements were included in an addendum report prior to the adjudication hearing. At the hearing, mother's counsel objected to the introduction of this portion of the report as hearsay. The court sustained the objection and indicated it would not consider the therapist's statements. On appeal, however, mother's opening brief discusses the therapist's statements as part of her Statement of Facts, with no suggestion that the evidence had been excluded. Under the circumstances, we conclude mother is no longer pursuing her objection.

5. *The Adjudication Hearing*

A contested adjudication hearing was held on April 12, 2018. DCFS relied on its multiple written reports. Mother introduced the testimony of three witnesses who testified that Roberto and Anna fought and that they (the witnesses) did not see mother abuse the children in the limited interactions they observed.

We particularly discuss the evidence regarding two key issues: the parents' relationship with Victor; and the issue of parental bonding with Roberto and Anna.

A. *No Evidence of Physical Abuse of Victor*

As to Victor, no evidence was offered that mother or father directly abused or neglected the child. All of the Department's evidence was that Victor was well cared for in their home, and that mother was appropriate with him at visits. Indeed, Victor was "very attached to his mother," and was seen clinging to her prior to his detention.

B. *Evidence of Mother's Difficulty Bonding with Roberto and Anna*

When the original April 2014 petition with regard to Roberto and Anna was sustained, it included an allegation that mother had mental problems, including a diagnosis of Major Depressive Disorder, Single Episode, which rendered her "unable to sufficiently attach and bond with the children or meet their emotional needs." When mother ultimately reunified with Roberto and Anna three years later, bonding with the children was still an issue, and the children's therapist agreed to continue to provide in-home services, recommending Parent-Child Interaction Therapy. Mother repeatedly cancelled sessions at the last minute, or the children would not be at home when the

therapist arrived. Eventually, the therapist discontinued therapy because she believed mother did not want the children to participate.

By the time of the October 2017 abuse allegations, mother stated that she had been assessed by the regional center and was found to have no mental health diagnosis. Mother was, however, receiving some counseling through the Young Mothers and Babies Program, where she had been receiving services since 2014. Mother's case manager reported that mother "did have a strong bond and attachment to the child [Victor]. [The case manager] noted that mother and father were very unstable and homeless during [Roberto and Anna's] first year of life, which likely impacted the bonding process with these children."

There were reports that, at visits, mother showed favoritism toward Anna and Victor over Roberto. At one visit, mother gave Anna and Victor \$1 each, but gave Roberto only a penny. At another visit, mother brought Anna new shoes, but nothing for Roberto.

6. *Findings at Adjudication Hearing*

The court specifically concluded that mother and father were not credible in their denials of the physical abuse of Anna and Roberto. The court gave more weight to the statements of Anna and Roberto to the extent they described abuse by mother and a failure to protect by father. As to the petition regarding Anna and Roberto, the court found the allegations of abuse and neglect true, and the children were described by subdivisions (a) and (b). As to Victor, the court found true only the allegation that he was described by subdivision (j) – sibling abuse – and dismissed the counts under subdivisions (a) and (b) in the interests of justice.

The case was continued for a contested disposition hearing.

7. *Mother Shows Further Favoritism of Anna*

Prior to the disposition hearing, mother continued to demonstrate favoritism toward Anna at joint visits with Anna and Roberto. At one visit, she gave Anna \$1, a purse, and sunglasses; Roberto received \$1 only.

8. *The Contested Disposition Hearing*

The disposition hearing was held on May 4, 2018. The Department recommended reunification services with Victor, but not Anna and Roberto, due to the lengthy services parents had already received with respect to the older children. The parents argued for reunification services with all children, and specifically requested Victor be returned to their home, as there had been no allegations that they had physically abused him.

An issue at disposition was the parents' amenability to, and participation in, services. Although mother had been receiving counseling through the Young Mothers and Babies Program, it appeared from the participation letter mother obtained that the issues she chose to address in counseling were not related to parenting. Father attended conjoint counseling with mother through that program; her therapist recommended that he attend individual counselling. Father claimed to be unable to afford individual counseling; the social worker gave him referrals for no- and low-cost services. There is no suggestion in the record that he took advantage of these services.

Prior to the adjudication hearing, both parents claimed that they had already completed services in connection with the earlier proceedings, so were not required to do anything else. However, as Roberto and Victor were receiving services at the regional center, both parents agreed to take a specialized

parenting class there. The class was to begin in February 2018. The parents missed too many of the early sessions because mother was ill, so they planned to begin the class when it was offered again in April. They apparently failed to attend in April as well. By the time of the May 2018 disposition hearing, mother and father had signed up to attend the regional center parenting class beginning in June.

The court found, by clear and convincing evidence, that removal of Victor from the home was necessary, because there was a substantial danger to him in the home and no reasonable means to protect him without removal. Mother and father were granted reunification services with Victor.

Mother filed a timely notice of appeal.

DISCUSSION

On appeal, mother argues the evidence is insufficient to support the adjudication of Victor as dependent, on the basis that there is no substantial evidence that Victor was at substantial risk of abuse or neglect, given that he was well cared for despite mother's physical abuse of his siblings. Similarly, mother argues the evidence was insufficient to support the removal of Victor from her home, in that there was no risk to him, and there were reasonable means to protect him if he remained in the home.

1. Standard of Review

"We review the entire record to determine whether the trial court's jurisdictional and dispositional findings are supported by substantial evidence. Substantial evidence is evidence that is reasonable in nature, credible, and of solid value. We do not reweigh the evidence, evaluate the credibility of witnesses or resolve evidentiary conflicts. We draw all legitimate and reasonable inferences in support of the judgment. The appellant

has the burden to demonstrate there is no evidence of a sufficiently substantial nature to support the findings or orders.” (*In re D.B.* (2018) 26 Cal.App.5th 320, 328-329.)

2. *Substantial Evidence Supports the Finding of Substantial Risk in Connection with the Adjudication*

Victor was declared dependent under subdivision (j) of section 300. Under that subdivision, a child may be declared dependent if “[t]he child’s sibling has been abused or neglected, as defined in subdivision[s] (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall 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.”

A child may be declared dependent under this subdivision even if the child has not been abused or neglected; the subdivision requires only a substantial risk that the child will be abused or neglected. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) If a child’s sibling has suffered severe abuse, even a low probability that the child will be similarly abused is enough to establish a substantial risk. (*Id.* at p. 778.)

In determining whether there is a substantial risk to a child based on sibling abuse, the trial court should consider the totality of the circumstances. (*In re D.B., supra*, 26 Cal.App.5th at p. 329.) This may properly include concerns regarding the parents’ credibility, when they have changed their stories and provided misinformation to the social worker. (*Ibid.*)

Here, mother argues that Victor was not at substantial risk of abuse because he was differently situated from his siblings who were found to be abused. Specifically, there was no evidence that mother had mistreated Victor; and, more importantly, mother had bonded with Victor. In contrast, her documented difficulty in bonding with the older children had contributed to the jurisdictional finding as to Roberto and Anna.

We are not persuaded. While a failure to bond may have been a part of the 2014 adjudication of dependency for Roberto and Anna, there is no evidence that any such failure to bond was the cause of mother's physical abuse of those two children. Mother struck and choked Roberto; she punished him with cold and hot showers, causing pain to his back and genitals. This brutal mistreatment of a developmentally-delayed five-year-old is not a mere manifestation of a failure to bond, but physical abuse, reflecting an inability to properly discipline a young child. Mother showed clear favoritism toward Anna at visits, but this level of bonding did not prevent her from striking the child in the head, causing her to bleed.

Considering the totality of the circumstances, we note that mother initially lost custody of Anna and Roberto when the children were younger than Victor was at the time of the adjudication hearing under review. She has never successfully parented a child through the so-called "terrible twos," when children frequently present difficult behavioral challenges. (See *In re D.B.*, *supra*, 26 Cal.App.5th at p. 331.) Less than six months after Anna and Roberto were returned, mother demonstrated that she was unable to parent them without abusive physical discipline. Mother and father repeatedly denied physically striking the children; blaming accidents, siblings,

former foster parents, and lying teachers for the children's injuries and reports of abuse.⁶ The trial court found a substantial risk to Victor; we conclude the evidence was sufficient to support that finding.

3. *Substantial Evidence Supports the Dispositional Order Removing Victor From the Home*

“Before the court may order a child physically removed from his or her parent, it must find, by clear and convincing evidence, that the child would be at substantial risk of harm if returned home and that there are no reasonable means by which the child can be protected without removal. [Citations.] The jurisdictional findings are prima facie evidence that the child cannot safely remain in the home. (§ 361, subd. (c)(1).) The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. [Citations.] In this regard, the court may consider the parent's past conduct as well as present circumstances. [Citation.]” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917.)

We review the court's disposition finding for substantial evidence. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 529.) Because the trial court's finding must itself be made on clear and convincing evidence, some appellate courts have stated that, in determining whether substantial evidence exists, we must determine if there was substantial evidence of the existence of

⁶ Although mother denied it, Anna, Roberto and father all agreed that mother used corporal punishment on the older children. Anna told the social worker that mother spanked Victor as well. While, on appeal, mother argues that spanking is not abusive, the critical issue is not that she spanked the children, but that she lied about it.

clear and convincing proof. (E.g., *In re Basilio T.* (1992) 4 Cal.App.4th 155, 170.) Other courts disagree, on the following reasoning: “ ‘ “The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal.” ’ [Citation.] Thus, on appeal from a judgment required to be based upon clear and convincing evidence, the clear and convincing test disappears and ‘the usual rule of conflicting evidence is applied, giving full effect to the respondent’s evidence, however slight, and disregarding the appellant’s evidence, however strong.’ [Citation.]” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1525-1526.) We need not take a position on this dispute, because the evidence was sufficient in this case under either measure.

The juvenile court is required to make a determination whether reasonable efforts were made to eliminate the need for removal and “[t]he court shall state the facts on which the decision to remove the minor is based.” (§ 361, subd. (e).) Here, the trial court’s minute order reflects a finding that it would be detrimental to Victor to return him home, and that reasonable efforts were made but there are no services available to prevent further detention. However, neither the minute order nor the reporter’s transcript reflects that the court “state[d] the facts on which the decision to remove” was based. This oversight does not necessitate reversal, however, because where the court fails to make a necessary finding, the error may be harmless where it is not reasonably probable a finding, if made, would have been in favor of the parents and substantial evidence would have amply

supported a contrary finding. (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218.) That is the case here.

As we uphold the jurisdictional finding, that finding presents prima facie evidence that Victor could not safely remain in the home. Mother argues, however, that she had taken strides to “immerse herself in services” and that reasonable means existed to keep Victor safe in the home, such as requiring her to continue services or ordering DCFS to make frequent, unannounced visits. The evidence does not support mother’s appellate argument. She did not “immerse herself in services.” Anna and Roberto’s therapist had previously volunteered to provide in-home Parent-Child Interaction Therapy to assist in their transition back home, but the services were terminated because Mother failed to participate. Mother obtained regular counseling from Young Mothers and Babies, but believed she had already completed the necessary services and required nothing further. Although she agreed to attend parenting classes at the regional center in February 2018, she missed the start of both the February and April sessions, and had not yet commenced the classes by the May 2018 disposition hearing.

The evidence further establishes that requiring additional services or increased DCFS visits would not keep Victor safe in the home. Mother had three years of reunification services with Anna and Roberto, but nonetheless abused them shortly after they were returned. Victor was young, with evidence of possible developmental delays, and utterly unable to protect himself or report abuse. Mother’s threats to Roberto’s school showed that she was not above bullying mandated reporters in order to shield her abusive conduct from discovery.

DISPOSITION

The jurisdiction and disposition orders are affirmed.

RUBIN, P. J.

WE CONCUR:

BAKER, J.

MOOR, J.