

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re J.M., et al.,

Persons Coming Under the Juvenile
Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

Y.M.,

Defendant and Appellant.

B295075

(Los Angeles County
Super. Ct. No. 18CCJP07450A, B)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Rashida A. Adams, Judge. Affirmed.

Judy Weissberg-Ortiz, by appointment of the Court of Appeal, for
Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant
County Counsel, and William D. Thetford, Principal Deputy County Counsel,
for Plaintiff and Respondent.

In this juvenile dependency appeal, appellant, Yesenia M. (mother), challenges the juvenile court's jurisdictional finding regarding her children. Mother contends that substantial evidence does not support the jurisdictional finding that she failed to protect her children from domestic violence by her companion. Mother argues this is true because, as of the date of the jurisdictional hearing, there was no evidence to support a finding the children were at substantial risk. We reject this contention. The record contains ample evidence to support the court's assertion of jurisdiction.

BACKGROUND

J.M. (born June 2003) and her younger sister, G.M. (born September 2010), are the subjects of this appeal. Appellant, Y.M. (mother) is the children's mother.¹ In September 2018,² mother and the girls were living in with relatives, including Ruby V. Mother's companion, E.O., lived in a small separate space (the backroom) on the same property. In mid-September, DCFS received several referrals regarding an incident of physical violence between mother and E.O. Although the information relayed to DCFS was not entirely consistent, the gist of the referral was that, at about 2:00 a.m. on September 12, mother and E.O. argued after he accused her of cheating on him, and

¹ The children's father, M.M. is not a party to this appeal.

² Undesignated date references will be to calendar year 2018.

E.O. had slapped mother on the face, causing her to sustain a black eye. Mother ran to J.M.'s bedroom window for help, and J.M. asked Ruby or a neighbor to call the police. When officers arrived, J.M. was crying in a doorway, while mother and E.O. continued to argue. E.O. told the police he had slapped mother on the face. Mother was crying, but refused to cooperate with the police and said nothing had happened. Mother instructed her daughters not to speak with the officers, and got upset with them when they did. Mother declined the officers' offer of an Emergency Protective Order (EPO). E.O. was arrested.

J.M. told the police that she heard mother yell to her for help as she and E.O. argued. J.M. went to the backroom, where she saw E.O. "smack her mother across her face." J.M. tried to intervene to defend mother, and sustained bruises on her arm after struggling with E.O. G.M. also witnessed the incident but was not hurt. Two days later, mother sought medical treatment because of pain in her face and eye. She told the medical staff she was a victim of domestic violence. The medical staff urged mother to obtain a restraining order, but she did not believe she or her daughters required protection.

Ruby told a DCFS social worker that mother, her children and E.O. had moved in together in fall 2017. On the day of the incident, Ruby was sleeping when J.M., who appeared afraid, woke her and said E.O. had hit mother. Ruby called the police, but when they arrived mother denied that E.O. had hit her. E.O. was arrested and, after his release, returned to the backhouse. Ruby was not aware of other

incidents of domestic violence, but had heard mother and E.O. argue in the past and had seen a bruise on mother's arm.

Mother met with the social worker on September 14. She claimed that she had not been hit or injured during the altercation with E.O., but became silent after the social worker said she knew otherwise. Mother then acknowledged that E.O. hit her face with an open hand after accusing her of cheating on him, but denied that she suffered any injuries, or had any marks or bruises after being struck. Mother also informed the social worker that the children had not witnessed anything. Mother assured DCFS that her daughters were safe, and that notwithstanding his return to the backhouse, E.O. had not contacted her since being released from jail. She denied being a victim of any prior acts of domestic violence, and claimed that E.O. had never been violent with her children.

J.M. informed the social worker that she had been in her room when she heard mother and E.O. screaming at one another in the backhouse. J.M. went to see what was happening and saw mother crying and covering her eye. E.O. told mother to leave. J.M. told the police what had happened because she was afraid that E.O. would continue to hurt mother, and E.O. had been arrested. J.M. was not aware of any other incidents of domestic violence, and said she felt safe living with mother.

G.M. informed the social worker that she had not seen anything, but did notice that mother's eye was swollen and did not know why.

G.M. said she felt “kind of safe” with mother, but was afraid of another incident between mother and E.O.

On September 20, Ruby called the social worker. She was concerned because E.O. was still living in the backhouse. Ruby claimed that mother had served E.O. with a temporary restraining order (TRO), but E.O. did not leave. Instead, he continued to pick mother up from work and bring her home. The children had also continued to interact with E.O., and Ruby heard mother tell J.M. that it was her fault that DCFS was now involved with the family.

During an unannounced DCFS visit on September 21, G.M. told the social worker that, although mother and E.O. continued to see one another, G.M. was not afraid of E.O. Mother had obtained but not abided by a TRO, but thought it was unfair that E.O. went to jail after accidentally hitting her. Mother said that J.M. did not like E.O., and would do anything to keep mother from having any man in her life other than J.M.’s father. Mother also accused G.M. of lying about everything, and said neither girl witnessed the incident on September 12.

But J.M. reiterated that she had heard mother and E.O. screaming at one another, and had gone to the backhouse. When she tried to enter the room where mother and E.O. were arguing, E.O. shut the door on her arm. J.M. also told the social worker that this was the only argument or physical altercation she knew of between mother and E.O., who was a good person except for that day. J.M. also said that mother had not been in contact with E.O. since the incident.

A few days later, mother called DCFS to explain that she obtained a TRO, would protect her children, and did not intend to resume her relationship with E.O.

On October 24, J.M. told the social worker that she had not felt comfortable with E.O. in the backhouse after the fight, but he had now moved out and she felt safe. A few days later, G.M. told the social worker that E.O. had continued to text her, and sometimes took her shopping. Mother did not object to this conduct. G.M. also said mother and E.O. had continued to see one another.

In early November, the social worker spoke with Ruby, who had moved to Texas a month before. Ruby said mother had continued her relationship with E.O. up to the time Ruby left, and that the couple had frequently gone out together. E.O. affirmed that his relationship with mother was ongoing, and he was still living in the backhouse.

DCFS obtained a removal warrant on November 19, placed the girls in foster care and filed a Welfare and Institutions Code³ section 300 petition alleging that mother and E.O. engaged in a violent altercation in the children's presence. (§ 300, subds. (a), (b).) The petition alleged that mother had pushed E.O., who responded by striking her in the face so hard she required medical attention. When J.M. tried to intervene on mother's behalf, E.O. had closed the door on the child's arm. E.O. was arrested for battery. DCFS alleged that mother failed to protect her daughters by permitting E.O. to have

³ Statutory references are to the Welfare and Institutions Code.

continued and unlimited access to the children. At the detention hearing, the juvenile court removed the children from mother's care, and gave mother unmonitored visitation. A jurisdictional hearing was scheduled for January 10, 2019.

A DCFS Dependency Investigator (DI) interviewed family members and E.O. in December. J.M. now denied having seen E.O. hit mother. At first, J.M. said she and her sister had been asleep in their bedroom, and woke up when they heard the police arrived. Later, J.M. acknowledged that she had heard mother argue with E.O. in the backroom, but denied having tried to enter the room or that her arm was hurt after being caught in the door. J.M. claimed she had been injured playing basketball at school earlier that day, and denied seeing any physical altercations between mother and E.O. G.M. told the DI that she had heard the argument between mother and E.O., but mother told her to go back to her room. G.M. denied having seen any physical violence between her mother and E.O. on September 12, or ever.

Mother told the DI that, on September 12, she and E.O. had been in the backhouse (the girls were asleep in their room in the main house). E.O. became angry at mother, accused her of cheating on him and insulted her and told her to leave. She had given him a "slight shove." E.O. responded by intentionally hitting her in the face, badly hurting her eye. J.M. had come in to see what was going on, and E.O. claimed accidentally to have hit mother. When J.M. turned to leave, stating she was going to call the police, E.O. tried to stop her and closed the door on J.M.'s arm. Mother had instructed E.O. to let go of the door

because he was hurting J.M. Several days later, mother saw a bruise on her daughter's arm. E.O. was arrested and a TRO was issued. Subsequently, mother went with E.O. to the criminal court, where she learned the charges against him had been dropped and the TRO terminated. At that point, E.O. returned to live in the backhouse.

Mother claimed that she had not seen E.O. since the children's detention, and thought he may have moved out. Mother was looking for a new place to live and planned to request a restraining against E.O., whom she now claimed to fear. She said E.O. had threatened to make up false allegations about her, and said he would hit her again if she pursued criminal charges against him or did anything to affect him.

E.O. told the DI that on September 12, he became angry with mother, who had not answered or returned his calls the day before. G.M. told him that was because the family was eating with someone named Jose. E.O. had questioned mother in the backhouse about the day before. Mother denied having been with another man, and they both raised their voices. Mother then pushed E.O., who reacted by putting out his hand and accidentally striking her in the face. E.O. had not observed any injury to mother. At that point, J.M. came in and saw mother holding her eye. J.M. believed E.O. had hit mother and turned to go call the police. E.O. denied having closed the door on J.M.'s arm. E.O. told DCFS that he had moved out and had not returned to the property since the girls were detained.

On December 27, mother filed a Request for a Domestic Violence Restraining Order (DVRO) against E.O. She said that she wanted to

protect herself and her daughters from E.O., who had come to her home on December 18, called her a bitch, and accused her of sleeping with other men. E.O. had told mother that he had hit her because that was how bitches were treated. When mother said she planned to get a DVRO, E.O. told her that, if she did, he would tell the judge that J.M. had tried to kill him with a knife.⁴ He threatened to have mother deported and the girls removed if she refused to drop an existing restraining order.

Mother elaborated on the events on September 12 in her statement filed in support of her request for a DVRO. She said that, after she denied E.O.'s accusation that she was seeing someone else, he responded by calling her a stupid whore and said she was just like every other whore in town. E.O. then began screaming at mother and hit her in the eye, and she had pushed him to get away. He followed her outside and started screaming at her daughters that they were bitches. Mother claimed E.O. had a "history of being really jealous," and his violent, threatening behavior made her fear for her own and her daughters' safety. Mother had moved into a new place on January 1, 2019, and said she had not had any contact with E.O. since his visit to her home in December.

⁴ When J.M. went to the backhouse on September 12, she saw a knife. Afraid that E.O. would hurt her with it, J.M. grabbed it first and cut her finger.

In a January 8, 2019, interview with DCFS, E.O. said that he and mother were both at fault for the domestic violence in September, and he accepted responsibility for his actions. However, mother had blamed him for the children's detention, and he went to her house on December 18 to offer his help. He denied having threatened mother or calling her names, and said she had been verbally aggressive with him.

Thereafter, E.O. was served with a DVRO.

By January 9, 2019, DCFS reported that mother had enrolled in a domestic violence program, was behaving protectively over the children and had taken responsibility for her actions. DCFS recommended that the children be returned to mother's custody.

The jurisdictional hearing was conducted on January 10, 2019. Mother's counsel argued that the domestic violence incident was a lone occurrence, and the petition should be dismissed. The children's counsel argued that the domestic violence was serious and had involved J.M.'s intervention. The children's attorney believed that, but for DCFS's intervention, it was unlikely mother would have taken any measures to protect her children, and urged the court to sustain the petition. DCFS concurred with the children's attorney's view, and also pointed out that mother had not been forthcoming with DCFS, had blamed one daughter for this situation, and had called the other a liar. Mother had instructed her daughters not to talk to the police and continued her relationship with E.O. Only later, in her request for a DVRO, did mother acknowledge that domestic violence had occurred

and that E.O. had struck her intentionally. At that point, mother feared for her safety because E.O. had threatened to hit her again.

The juvenile court found that DCFS met its burden to establish a prima facie case with respect to count b.⁵ The court observed that there was very little in dispute as to whether the September incident occurred, and whether J.M. was hurt as she tried to intervene to help mother. Moreover, even though it was the first incident of physical violence, mother had at first denied and/or minimized the event. Indeed, mother continued to live on the same property with E.O. and allow him into the home where she and her children lived. Mother did nothing to remove herself from the situation until the children were physically removed from her care.

Proceeding to disposition, the court declared the children dependents and ordered them placed with mother. Mother was ordered to attend a parenting class and to participate in individual counseling. This appeal followed.

DISCUSSION

Mother contends there is insufficient evidence to support the jurisdictional findings because the risk posed to her children by the domestic violence between mother and E.O., which precipitated this dependency proceeding, no longer existed by the time of the

⁵ Allegations under section 300, subdivision (a) were dismissed, and that ruling is not at issue here.

adjudication hearing, and was not likely to reoccur. We conclude otherwise.

1. *The Standard of Review and Controlling Law*

“In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings . . . , we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations.”” (*In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*)) ““We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.]”” (*Ibid.*) It is the trial court’s role to assess witness credibility and resolve evidentiary conflicts. We lack the power to weigh, judge the effect or value of, or to resolve conflicts in the evidence or the reasonable inferences which may be drawn therefrom. (*In re A.S.* (2011) 202 Cal.App.4th 237, 244; *I.J.*, at p. 773.)

Jurisdiction over a child is appropriately asserted under section 300, subdivision (b)(1), if: “The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm . . . as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent . . . to adequately supervise or protect the child from the

conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent.” (§ 300, subd. (b)(1).)

Domestic violence in the home is detrimental to children (see *In re E.B.* (2010) 184 Cal.App.4th 568, 576), and the failure to protect children from the substantial risk of encountering such violence and from suffering serious physical harm or illness as a result creates jurisdiction under section 300, subdivision (b)(1). (*Id.* at pp. 576–577.)

2. *Substantial Evidence Supports the Juvenile Court’s Findings*

Mother contends that a single incident of domestic violence, four months before the jurisdictional hearing, was an insufficient basis to support the court’s assertion of jurisdiction, because, among other things, (1) neither of her daughters suffered serious physical harm during the incident; (2) the incident was an isolated event not likely to reoccur, and neither she nor E.O.—who had never previously exhibited such jealous behavior—had a history of domestic violence; (3) E.O. had initiated the physical violence, and he had not been prosecuted for the attack; (4) by the time of the jurisdictional hearing, mother understood the impact on her children and the importance of protecting them from future domestic violence; and (5) at disposition, the court returned the children to mother’s custody, demonstrating no extant risk. None of these contentions has merit.

First, it is untrue that no child was injured as a result of the incident. Mother concedes that J.M.’s arm was caught in the door when E.O. tried to prevent her from leaving to call the police, but argues that

the juvenile court made no finding that J.M. had suffered a physical injury. The record refutes this assertion. Although the sustained count does not specifically state that J.M. sustained a physical injury, it does say that E.O. closed the door on the child's arm. Moreover, the court explicitly stated that there was "little dispute in the evidence [that] . . . [J.M.] *was injured [when she] attempt[ed] to intervene*" to protect mother from E.O. (Italics added.) In addition, DCFS reported that mother had specifically instructed E.O. to let go of the door because he was "hurting [J.M.]," and mother conceded that she saw a bruise on the child's arm days after the incident. In addition, J.M. told the police on September 12 that she saw E.O. strike mother and that she was hurt when she tried to intervene. Under the circumstances here, the fact that J.M. suffered physical injury while intervening in domestic violence between her mother and E.O., supports the assertion of juvenile court jurisdiction. (See *In re J.N.* (2010) 181 Cal.App.4th 1010, 1025–1026 (*J.N.*).

Second, the fact that a lone incident of domestic violence occurred does not mean that the jurisdictional findings lack sufficient evidentiary support. "The nature and circumstances of a single incident of harmful or potentially harmful conduct may be sufficient, in a particular case, to establish current risk depending upon present circumstances." (*J.N.*, *supra*, 181 Cal.App.4th at p. 1026.) "In evaluating risk based upon a single episode of endangering conduct, a juvenile court should consider the nature of the conduct and all surrounding circumstances. It should also consider the present

circumstances, which might include, among other things, evidence of the parent's current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs, or other steps taken, by the parent to address the problematic conduct . . . that would help [the] parent avoid a recurrence of such an incident." (*J.N.*, at pp. 1025–1026.) Further, mother's claim that E.O. had never exhibited jealousy is belied by her statement in support of her request for the DVRO, wherein she stated that E.O. had a "history of being really jealous."

The evidence in the record reflects that the circumstances here were serious: a child was physically injured during an incident in which both mother (who shoved E.O.) and her partner (who struck mother's face so hard she required medical attention) were physically violent in a child's presence. And, at first, mother was more protective of E.O. than of her children. When the police arrived, J.M. was crying in a doorway as mother and E.O. continued to argue. Instead of taking action to protect herself or her children, mother was uncooperative with the officers, denied that anything had happened, refused an EPO, told her daughters not to talk to the police, and became angry when they did. Later, mother blamed one child for the family's situation and accused the other of habitual lying. Moreover, despite DCFS's early attempts to work with her, mother took no steps to protect her children until they were physically detained. Until confronted with contradictory evidence by the social worker, mother persisted in denying that any domestic violence occurred. Even after she conceded

that her boyfriend intentionally struck her hard on the face, and even though she sought medical attention as a result of that injury, mother continued to deny to DCFS that she had sustained a black eye or any injury.

Third, that E.O. was not prosecuted for a crime does not suggest the evidence presented to the juvenile court was insufficient. The district attorney's decision not to proceed with a prosecution has no bearing on whether a dependency action may proceed on the same underlying facts. The dependency action is focused squarely on the children's best interest, and proceeds on a far lower standard of proof, especially at the jurisdictional phase where DCFS need only establish the allegations of the petition by a preponderance of the evidence (see § 355, subd. (a)).

Fourth, mother's claim that she took early and necessary steps to protect her children from exposure to further violence is belied by the record. Even after he was released from jail, E.O. returned to live in the backhouse, and both he and mother behaved as though nothing happened. Although mother obtained a TRO, she claimed it was a mistake. Mother also changed her story several times, first claiming that E.O. did nothing wrong and that there had been no physical violence. Later, she contradicted that story, when she told the social worker E.O. hit her face by accident. Mother accused her children of lying about the occurrence of conduct and events she later acknowledged, and told J.M. it was her fault that DCFS was involved.

It was not until the children were detained and the dependency petition filed, that mother began to undertake necessary action or to be truthful.

Finally, the fact that the children were placed with mother at disposition and that services were made available to her does not render the court's assumption of jurisdiction erroneous, nor does it support mother's claim that the children were safe in her custody and at no risk of physical harm. Quite the opposite. In the absence of its assertion of jurisdiction, the juvenile court lacked authority to order DCFS to provide services to help facilitate necessary change and protect the children. As required by statute, the court concluded there were reasonable means to protect the children without removal, and there was no clear and convincing evidence that doing so posed a substantial danger to the children's health or safety. (See § 361, subd. (c)(1).) The dispositional order placing the children in mother's care, and the concomitant provision of protective services does not demonstrate that the jurisdictional findings were erroneous. On this record, we conclude there is ample evidence to support the juvenile court's findings and orders.

//

//

//

//

//

//

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WILLHITE, Acting P. J.

We concur:

COLLINS, J.

CURREY, J.