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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re KIMBERLY P. et al, Persons Coming
Under the Juvenile Court Law.

B239520

(Los Angeles County
Super. Ct. No. CK89776)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARIO P.,

Appellant.

APPEAL from an order of the Superior Court of Los Angeles County,
Patricia Spear, Judge. Affirmed.

Andre F. F. Toscano, under appointment by the Court of Appeal, for Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel and
Peter Ferrera, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Mario P. (father) appeals a jurisdictional and dispositional order of the juvenile court affecting his children Kimberly P. and Oscar P. The main issue on appeal is whether there was substantial evidence to support the juvenile court's jurisdictional findings. We shall conclude that there was such evidence, and thus affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Children's Family

Father and Thalia L. (mother) are the parents of Kimberly and Oscar. When this action commenced, Kimberly was 20 months old and Oscar was six months old. Before these proceedings, father, mother, Kimberly and Oscar lived in the same home. The entire family also slept on one bed, which is about seven inches above the floor. Father and mother were in a "committed relationship" for more than three years, but were not married.

Father had two jobs. In the mornings he worked as a dishwasher, and in the afternoons he worked in a noodle factory. Mother did not work outside the home. In addition to caring for her two children, she sometimes cared for her developmentally disabled adult sister, C.

The children's maternal grandmother, Martha L., visited mother almost every day. Martha sometimes cared for the children at mother's home and at her own home. C. did not take care of the children.

2. Oscar's Injuries

On September 17, 2011, mother took Oscar to an emergency room at a hospital. The treating physician found Oscar's left leg very swollen. After x-rays were taken, Oscar was diagnosed with a fractured femur. Oscar was immediately admitted into the hospital. Shortly after his admission, further tests indicated possible fractures in one of his ribs and in his skull.

3. The Department's Initial Investigation

The matter was referred to respondent Los Angeles County Department of Children and Family Services (Department). The Department interviewed mother, father,

and maternal grandmother. All three of these individuals denied any knowledge of how Oscar was injured. Mother and father also denied using illegal drugs or engaging in domestic violence. The Department's investigation indicated that father and mother did not have criminal histories and were not previously investigated by the Department.

4. *The Department's Petition and the Detention of the Children*

On September 22, 2011, the Department filed a juvenile dependency petition requesting the juvenile court to assert jurisdiction over Kimberly and Oscar. The petition alleged the court had jurisdiction over the children pursuant to Welfare and Institutions Code section 300, subdivisions (a), (b), (e) and (j).¹

On the day the petition was filed, the juvenile court found that there was a prima facie case for detaining the children. Kimberly was placed with her maternal grandmother, Martha. Oscar too, once he left the hospital, was placed with Martha. The juvenile court also ordered the Department to provide mother and father family reunification services and granted the parents monitored visits with the children.

5. *The Trial*

The juvenile court held a three-day trial on the petition. Dr. Karen Imagawa testified as an expert witness for the Department. She is a board certified pediatrician, the director of a child protection program at Children's Hospital Los Angeles, and an assistant professor of pediatrics at the University of Southern California Keck School of Medicine.

Dr. Imagawa stated that although she had "concern" about Oscar having a skull fracture, this injury could not be "confirmed." She also testified that Oscar had an acute, oblique fracture to his left femur, which was about 7 days old when he was examined at the emergency room on September 22, 2011. Additionally, Dr. Imagawa stated that Oscar had a fractured rib on the right side of his torso, which was about 14 to 21 days old when he was admitted to the hospital.

¹ Future statutory references are to the Welfare and Institutions Code.

Dr. Imagawa opined that Oscar's injuries were more likely than not consistent with nonaccidental trauma. She based this conclusion on a number of factors, including the following: (1) Oscar's family had no explanation for his injuries; (2) although Oscar was born prematurely, he did not have any medical condition that would cause him to have more fragile bones than an average child of his age; and (3) he was a non-mobile infant.

Dr. Thomas Grogan, a pediatric orthopedic surgeon, testified on behalf of father. He opined that it was "impossible" to determine whether Oscar's injuries were caused by accidental conduct.

The Department argued that its petition should be sustained in its entirety. Minor's counsel argued the petition should be sustained with the exception of certain counts relating to the parents' alleged failure to promptly seek medical attention for Oscar. Mother and father both argued that the court should dismiss the petition.

6. *The Juvenile Court's Jurisdictional and Dispositional Order*

In an order dated February 2, 2012, the juvenile court struck from the petition a number of allegations, including two counts relating to mother's and father's alleged failure to timely obtain necessary medical attention for Oscar, allegations regarding Oscar's skull fracture, and allegations that mother and father acted in a "deliberate" manner. The court sustained the remainder of the petition pursuant to section 300, subdivisions (a), (b), (e) and (j). The court also declared Kimberly and Oscar dependent children of the court, removed custody of the children from the parents, ordered the Department to place the children in a suitable home, granted mother and father monitored visits, and ordered mother and father to attend conjoint counseling.

Father filed a timely notice of appeal of the February 2, 2012, order. Mother did not appeal.

CONTENTIONS

Father contends there was no substantial evidence to support the juvenile court's jurisdictional findings. He further argues that if the jurisdictional findings are reversed, the dispositional orders as to father must also be reversed.

DISCUSSION

1. *We Shall Not Deem the Appeal Moot*

Father concedes that the juvenile court has jurisdiction over both Oscar and Kimberly regardless of whether he prevails on this appeal. This is because mother did not appeal the jurisdictional findings relating to her wrongdoing, and “ ‘a minor is a dependent if the actions of either parent bring her within one of the statutory definitions of a dependent.’ ” (*In re Alexis H.* (2005) 132 Cal.App.4th 11, 16.)

Further, on August 27, 2012, while this appeal was pending, the juvenile court ordered that Kimberly and Oscar be placed in the home of father and mother.² In light of these circumstances, the Department contends father’s appeal is moot.

We decline to deem this appeal moot. If father prevails, he will not be subject to the juvenile court’s dispositional orders, including participating in counseling. This potentially could have an impact on the proceedings below. Additionally, in the event there are future dependency proceedings involving father, Oscar or Kimberly, our opinion regarding this dependency case may be helpful.

2. *There Was Substantial Evidence to Support the Juvenile Court’s Jurisdictional Findings*

a. *Standard of Review*

We review the juvenile court’s jurisdictional findings under the substantial evidence test. (*In re Maria R.* (2010) 185 Cal.App.4th 48, 57.) “The term ‘substantial evidence’ means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value.” (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) In determining whether there is substantial evidence, “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

² Pursuant to Evidence Code section 459, we take judicial notice of the juvenile court’s minute order dated August 27, 2012.

favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

b. *There Was Substantial Evidence to Support the Juvenile Court’s Jurisdiction Over Oscar Under Section 300, Subdivision (e)*

Section 300, subdivision (e) provides that the court can take jurisdiction over a child under the age of five years if he or she “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 purposes of this subdivision, “severe physical abuse” includes one or more act of physical abuse, each of which causes bone fracture. (§ 300, subd. (e).)

We hold there was substantial evidence to support the juvenile court’s finding that it has jurisdiction over Oscar pursuant to section 300, subdivision (e). It is undisputed that Oscar was under the age of five years old, that he lived with father and mother, and that he suffered an acute fracture of his left femur while in his parents’ custody. Dr. Imagawa testified that Oscar also suffered from a rib fracture, which occurred on a different date than his femur fracture, and that his injuries were more likely than not caused by nonaccidental conduct.³ This was substantial evidence to support the juvenile court’s finding that father “reasonably should have known” about the severe physical abuse which caused Oscar’s injuries.

Father argues there was no evidence that father caused Oscar’s injuries or that he had reason to know of Oscar’s injuries because he was “always” at work and was “hardly at home because of his two jobs.” According to Department reports admitted into evidence, however, father was “usually at home in the mornings as he did not start work until late morning or early afternoon.” Father also concedes that he was home at night and slept in the same bed as Oscar. Further, in his sworn statement regarding parentage

³ In the section 300, subdivision (e) count in the petition, the juvenile court struck the allegation that father “knew” of the physical abuse but did not strike the allegation that the “child’s injuries are consistent with non accidental trauma.”

he filed with the juvenile court, father admitted he participated in “playing, feeding, [and] diapering” Oscar.

Moreover, the evidence indicated that Oscar was a non-mobile infant who was cared for by only three people—mother, maternal grandmother and father. Thus a reasonable inference can be drawn that Oscar was injured while he was in the care of one of these three individuals, and that father should have reasonably known who was causing the injuries. (*In re E. H.* (2003) 108 Cal.App.4th 659, 670.)

The facts of *In re E. H.* are remarkably similar to this case. There, an infant sustained multiple bone fractures, which an expert physician opined were likely caused by nonaccidental conduct. (*In re E. H., supra*, 108 Cal.App.4th at pp. 661-662.) Although the only people who cared for the infant were her mother, father and older siblings, everyone in her family denied knowing how the infant was injured. The juvenile court dismissed the section 300, subdivision (e) allegation because there was no identified perpetrator. (*Id.* at p. 667.) The Court of Appeal, however, reversed. It held that the “only reasonable conclusion to be drawn from the facts of the instant case was that someone in the home was causing E.’s injuries, and that [mother] and [father] *reasonably* should have known (since they lived there) the identity of the perpetrator.” (*Id.* at p. 670.)

The court concluded: “[W]here there is no identifiable perpetrator, only a cast of suspects, jurisdiction under subdivision (e) is not automatically ruled out. A finding may be supported by circumstantial evidence as it is here. 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).” (*In re E. H., supra*, 108 Cal.App.4th at p. 670.)

We agree with the holding and reasoning of *In re E. H.* Under *In re E. H.*, the juvenile court’s section 300, subdivision (e) finding in this case must be affirmed because there was substantial circumstantial evidence supporting the finding.

c. *We Do Not Reach the Issue of Whether There Was Substantial Evidence to Support the Juvenile Court's Jurisdiction Pursuant to Section 300, Subdivisions (a), (b) and (j)*

Father argues there was no substantial evidence to support the juvenile court's jurisdictional findings pursuant to section 300, subdivisions (a), (b), and (j).⁴ We do not reach the merits of his arguments regarding these subdivisions because we affirm the juvenile court's assertion of jurisdiction pursuant to section 300, subdivision (e), which is a sufficient basis for the juvenile court's jurisdictional and dispositional order. (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875.)

3. *Father Did Not Meet His Burden of Showing The Juvenile Court's Disposition Constituted Reversible Error*

Father's only argument with respect to the juvenile court's disposition is that "[r]eversal of the juvenile court's jurisdictional findings under section 300 compels reversal of the subsequent dispositional orders." Because we reject father's arguments regarding the juvenile court's jurisdictional findings, we also reject his argument regarding the juvenile court's disposition.

⁴ Under section 300, subdivisions (a) and (b), the court can take jurisdiction over a child if he or she 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" (subdivision (a)) or "as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child" (subdivision (b)). Section 300, subdivision (j) provides that the court can take jurisdiction over a child if the "child's sibling has been abused or neglected, as defined in subdivision (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."

DISPOSITION

The order dated February 2, 2012, is affirmed.

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KITCHING, J.

We concur:

CROSKEY, Acting P. J.

ALDRICH, J.