Filed 8/1/12 In re J.A. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re J.A., a Person Coming Under the Juvenile Court Law.	B237589 (Los Angeles County Super. Ct. No. CK 90193)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. E.J., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Robert L. Stevenson, Juvenile Court Referee. Affirmed.

Michelle L. Jarvis, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

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The court found that eight-year-old J.A. was a child described in subdivisions (a) and (b) of Welfare and Institutions Code section 300.[1] Respectively, these subdivisions speak of serious physical harm inflicted on the child by a parent and of a failure on the part of a parent to protect the child from physical harm. The court declared J.A. to be a dependent of the court but the court found no clear and convincing evidence that there was a substantial risk if J.A. were returned to his mother. Accordingly, the court placed J.A. with his mother and ordered unannounced visits by the Los Angeles County Department of Children and Family Services (DCFS), examinations of J.A. by DCFS and individual counseling for mother.

E.J., J.A.'s mother, appeals, claiming that the evidence does not support the jurisdictional finding. We conclude to the contrary and therefore affirm.

FACTS

1. Factual Findings by the Court

The court found that mother had physically abused J.A. by striking him on the leg with a telephone cord. On prior occasions, mother had struck J.A. with belts. This physical abuse was excessive and caused J.A. unreasonable pain and suffering. The foregoing endangered J.A.'s physical health and safety.

2. The Evidence

J.A. came to school on May 20, 2011, complaining of pain to his leg. A member of the school staff looked at J.A.'s leg and saw a bleeding puncture wound on the back of the calf about a quarter of an inch long and deep. J.A. told the staffer that mother had gotten mad at him and hit him twice with a telephone charger cord, causing the leg to bleed. J.A. said mother beats him with a belt when he misbehaves. She also slaps J.A. with her open hand. J.A. would try to cover himself with blankets or a pillow so that the blows would not hurt so much.

DCFS and the police were called and interviewed J.A. Both agencies confirmed J.A.'s physical condition and his explanation of his condition.

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[1] All further statutory references are to the Welfare and Institutions Code.

J.A. was examined at the Violence Intervention Program clinic of LAC+USC hospital the next day. He now denied that anyone had hit him. However, the examination disclosed a fading bruise on his left thigh, abrasions to his left knee and right thigh, red linear marks on his left shoulder, a scar on his right elbow, several loop marks on his left leg and one loop mark on his right leg. The bruises and loop marks were not consistent with J.A.'s story that he fell.

DCFS worked out a safety plan that called for a continuation of the investigation and left J.A. with mother upon her promise not to use corporal punishment.

In June 2011, mother and father[2] agreed to a family safety plan worked out by DCFS. The plan called for six months of family maintenance services and family counseling.

In July and August mother became uncooperative and failed to show up at several scheduled meetings. When DCFS managed to see mother and J.A. at the end of July, J.A. denied that mother hits him. At the end of August, mother told DCFS that she wouldn't participate in the family plan DCFS had worked out, that she disagreed about the physical abuse allegations and that DCFS could take her to court if it wished.

In September, DCFS tried twice to meet with mother but without success. At the end of the month, when DCFS managed to contact mother, she became angry and told DCFS that she would not participate in family or individual counseling.

DCFS detained J.A. and his 14-year-old sister E.A. on September 30, 2011, and filed the section 300 petition on behalf of both children. The allegations involving J.A.'s sister were eventually dismissed.

PROCEDURAL HISTORY

At the detention hearing on October 5, 2011, the court placed J.A. and his sister with father and ordered monitored visits by mother as to J.A. In substance, mother denied the abuse.

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[2] They are not married and father does not live with mother.

Mother continued with her denials during the jurisdictional hearing on November 15, 2011. J.A. also denied that mother had abused him, blaming children at school for the tell-tale marks on his body. The court rejected mother's denials as inconsistent with the evidence and told J.A. that he was trying to protect his mother. The court then made the factual findings that are set forth above.

DISCUSSION

Appellant acknowledges that the substantial evidence standard governs and goes on to state: ". . . mother accepts the finding that she struck J.A. with a phone cord and used a belt as discipline." Section 300 speaks of "serious physical harm" to the child. Mother goes on to contend that, despite her concession on appeal that she struck J.A., there is no substantial evidence of serious physical harm.

Appellant relies on the circumstances that the court struck the allegation that the phone cord caused a bleeding laceration on J.A.'s leg and that it is possible that some of J.A.'s injuries were inflicted by other children at school.

Appellant overlooks an aspect of the substantial evidence standard that is dispositive of this appeal. If there are two reasonable inferences to be drawn from the evidence, one which supports the trial court's decision and one which does not, this court *must* rely on the first inference. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) While it may be a reasonable inference that some of J.A.'s injuries were caused by fights at school, this is not the inference that we will draw. We must draw the inference that striking an eight year old with a belt poses a risk of serious physical harm, which is certainly a reasonable inference.

That the trial court struck the allegation that mother had inflicted a bleeding laceration has no effect on our duty to draw inferences that support the trial court's decision. Appellant acknowledges on appeal that she struck J.A. with a phone cord and also hit him with a belt as a way of disciplining him. The inference that supports the trial court's decision is the reasonable one that such practices create a risk of serious physical harm.

We do not find it particularly difficult to conclude that hitting a small child with an object -- any object -- endangers the child. An eight-year-old boy is not a football player wearing protective padding; an eight-year-old child is small, vulnerable and easily hurt. J.A.'s statement that he tried to hide under pillows and blankets to lessen the hurt is very possibly the best evidence that mother's blows created a real risk of harm.

We agree with respondent that this case is much like *In re Mariah T.* (2008) 159 Cal.App.4th 428, 438, a case where the mother had struck her three year old with a belt. The point is that children should not be hit with objects, if they are going to be hit at all. The "distinction" urged by appellant between this case and *Mariah T.* -- that, unlike in *Mariah T.*, there was no "deep purple bruising" in this case -- is unpersuasive. Nor are we moved by the circumstance that in *In re David H.* (2008) 165 Cal.App.4th 1626, 1644-1645, the abuse was palpably more serious than in this case. Clearly, mother in this case has more going for her than in some others, *David H.* included, but that does not detract from the fact that she seriously endangered J.A.

That mother's other children report no physical abuse and that mother was supported by a number of strong character references is to her credit and undoubtedly contributed to the nuanced approach the trial court took in placing J.A. with her. In a class of cases where good news is not common, it is refreshing to see improvement and hope for the future.

DISPOSITION

The judgment (order) is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J. RUBIN, J.