

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 ONE

In re NICOLE M., a Person Coming Under
the Juvenile Court Law.

B236766

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK87542)

Plaintiff and Respondent,

v.

DENISE M.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Debra Losnick, Commissioner. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Navid Nakhjavani, Deputy County Counsel, for Plaintiff and Respondent.

Denise M. (Mother) appeals from the juvenile court's jurisdictional and dispositional orders. She contends there is insufficient evidence to support jurisdiction under Welfare and Institutions Code section 300, subdivision (a).¹ We affirm.

BACKGROUND

Mother and Raul M. (Father) are the parents of Nicole M., who was nine years old in April 2011, when this family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS).² Mother and Father were in the midst of divorce proceedings. Each parent stayed at the family home with Nicole for a week, and then left the home when the other parent came to stay for the week.

On April 7, 2011, DCFS received a referral alleging that Mother was physically and emotionally abusing Nicole. The person who reported the alleged abuse stated that Mother "hit Nicole on the stomach with [a] key chain and that [Nicole]'s back was hurting due to another incident that occurred in [Nicole]'s bedroom." The referral also included the allegation that Mother and Father had a history of domestic violence.

A DCFS social worker and two Los Angeles Police Department officers met with Mother at her home on April 7, 2011 to discuss the allegations made in the referral. Mother denied the physical abuse allegation. Mother stated that on the evening of April 6, 2011, Nicole hit and kicked her for a period of two hours because Mother picked up Nicole from school a few minutes late that day. Mother claimed that Nicole was mad at her "due to the divorce process." During the visit, Mother asked Nicole if she had spoken to anyone at school that day "regarding the family situation." Mother also stated to Nicole: "[I]f you hadn't said anything we wouldn't be in this mess." The social worker told Mother that it was inappropriate for her to make that type of comment to Nicole.

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

² Father is not a party to this appeal.

The social worker and officers also interviewed Nicole. She stated that on the evening of April 6, 2011, Mother came into her bedroom to tell her to put on her pajamas. Mother came closer and closer to Nicole as she instructed her to put on her pajamas. Nicole took a step backward and her back came up against the bed post. As she “continued to lean back,” she “slipped off the bed post and fell onto the floor.” Nicole stated that her back continued to hurt. The social worker did not observe any marks or bruises on her back when Nicole lifted up her shirt. Nicole told the social worker and officers that she was “fearful of” Mother because Mother would yell at her.

The social worker and officers inquired about a “domestic disturbance,” which had occurred at the family home on February 25, 2011. Mother responded that the incident ““was not a big deal.”” Nicole stated that Mother had assaulted Father and Nicole “was fearful” that Mother would do the same to her.

The social worker and officers took Nicole to the police station and then to a hospital emergency room. The emergency room physician asked Nicole to rate her back pain on a scale from zero to 10. Nicole stated that her pain level was seven. She was given medication for the pain. Nicole was discharged from the hospital with instructions for treating her back injury at home. The discharge instructions explained: “You have a CONTUSION of the back. This is a bruise with swelling and some bleeding under the skin. There are no broken bones. This injury takes a few days to a few weeks to heal. It is normal to feel muscle stiffness and aching in the area of the injury the next day.”

The social worker obtained a copy of the police report from the February 25, 2011 incident, during which Mother was arrested for spousal abuse. According to the report, Father dialed 911 and officers responded to the home. Father told the officers that Mother was following him around the house and yelling at him. Then Mother struck Father with a closed fist. Father felt an object strike his head and saw that Mother had keys in her hand. Mother still had keys in her hand when officers arrived. According to the report, Nicole witnessed the incident. She told the officers that Mother was yelling at Father as she followed him around the house. Nicole saw Mother strike Father on the

head numerous times. Nicole told the officers that she did not fear Mother. Officers observed injuries (redness) on Father's arm and head.

On April 8, 2011, Father appeared in family court, and the court granted him temporary sole legal and physical custody of Nicole.

On April 15, 2011, DCFS conducted a team decision meeting with Mother and Father. Regarding the incident with Nicole on April 6, 2011, Mother admitted that she pushed Nicole, but claimed that she did so in "self-defense because Nicole had been having a 'fit' and Nicole began hitting [M]other for a long period of time." According to DCFS "it was determined by all parties involved [in the meeting] that in the best interest of Nicole for her emotional and physical well-being and safety that she would continue to remain released under [F]ather's care and detained from [M]other." DCFS informed Mother and Father of the date for the detention hearing.

On April 18, 2011, Mother and Father appeared and testified in family court. The court made temporary orders, including that Father be awarded sole legal and physical custody of Nicole and "have exclusive use of the family residence." The court also ruled that its temporary custody order would "remain in full force [and] effect, except as modified by the Department of Children and Family Services." The court continued the matter to June 28, 2011.

On April 20, 2011, DCFS filed a petition under section 300, subdivisions (a) and (b), based on allegations regarding the April 6, 2011 physical altercation between Mother and Nicole,³ and the February 25, 2011 domestic violence incident between Mother and Father. At the April 20, 2011 detention hearing, the juvenile court ordered Nicole detained from Mother and released to Father. The court also ordered monitored weekly visitation for Mother.

In its jurisdiction/disposition report, prepared on or about May 11, 2011, DCFS provided a summary of a dependency investigator's May 5, 2011 interview with Mother.

³ The dependency petition lists April 15, 2011 as the date of the physical altercation between Mother and Nicole. It appears from the record, however, that this incident occurred on April 6, 2011.

Mother stated that, on April 6, 2011, she ““pushed [Nicole] off of [her]”” after Nicole had kicked and hit her ““for at least a half an hour.”” Then Nicole went into her bedroom and ““backed up into her bed post.”” Mother maintained that she did not know at the time that Nicole had backed up into the bed post. According to Mother, the day after the altercation, Nicole told a school counselor that Mother had pushed her.

Mother told the dependency investigator that Father had been verbally abusive to her ““for many years,”” and that she and Father had not shared a bedroom since 2003. Regarding the February 25, 2011 incident, Mother stated that she and Father had an agreement that she would not have to see him that morning as she helped Nicole get ready for school. But Father did not abide by the agreement, and he ““followed”” Mother into Nicole’s bedroom as Nicole was ““fussing over her clothes.”” Mother claimed: ““Somehow I got stuck with his arm on my face. He hit me so hard I thought I broke my nose. It was internal [the injury].””⁴ Mother stated that she knocked on Father’s head twice, as if to say, “““Hello, anybody home?””” She had her keys in her hand. She told Father that she was leaving to go to the doctor. When she walked outside, the police detained her. According to Mother, the spousal abuse charges against her were dropped because Father did not appear in court for the hearing.

In its jurisdiction/disposition report, DCFS also provided a summary of the investigator’s May 5, 2011 interview with Father. Father explained that he was not present in the home during the April 6, 2011 incident between Mother and Nicole. Father expressed concern about Mother’s inability to communicate with Nicole. Father stated that Mother yells at Nicole. According to Father, when Mother returned home from jail after the February 25, 2011 domestic violence incident, Mother asked Nicole why she had told the police what happened between Mother and Father. Nicole went to her bedroom and closed the door. Mother entered the room and ““started throwing Nicole’s

⁴ The officers who responded to the home reported that Mother did not have “any visible indication of injury.”

stuff in the air. Nicole was crying.” Father left the home with Nicole, and they stayed at a friend’s house.

Regarding the February 25, 2011 incident, Father told the investigator that he knew that Mother did not want to see him that morning as she helped get Nicole ready for school. Father got out of bed and went to talk to Nicole after he heard Nicole crying and heard Mother “screaming” at Nicole. Mother confronted Father about why he had gotten out of bed. Mother hit Father with her keys causing “scratches.” Father raised his arm to his head to block the blows.

On May 11, 2011, the investigator interviewed Nicole. DCFS provided a summary of the interview in a May 24, 2011 “Last Minute Information” for the juvenile court. Regarding the April 6, 2011 incident with Mother, Nicole stated: “She was coming at me. I was trying to block her. I pushed her, only once or twice to get her off of me. She gets mad very easily. I went into my room to put on my pajamas. She came in and she pushed me on the bed. I have a bed with a beautiful frame. There are four poles on each side. She pushed me and my back hit against one of the poles. I cried” Nicole stated that she did not tell Mother that she was hurt. The next day, her back hurt when she tried to bend.

Nicole also told the investigator: “[Mother] had big-big fights with my dad when I was little. I went to my room and hid under the cover of my bed until it was over. She fights with my dad once or twice a day. She doesn’t like my dad. . . [.] She hit my father a million times. My father does not hit her. . . .” Nicole told the investigator about an incident where Father was on the phone speaking to a relative and Mother approached “from behind and punched [Father] in the neck.”

Nicole also discussed the February 25, 2011 incident, stating that Mother hit Father with her keys causing scratches. Nicole knew Mother was “upset that [Nicole] told the police the truth that [Mother] hit [Father] with the keys.”

Nicole told the investigator that Mother took medication for back pain, and the medication made Mother “sleepy and mad a lot.” Nicole commented: “My mom has a patch, and if she doesn’t change it every 3 days, she goes insane.”⁵

On July 12, 2011, the juvenile court held the adjudication hearing. Mother submitted on the amended allegations in the petition, but objected to those allegations being sustained under Section 300, subdivision (a). Mother contended that the amended allegations should be sustained under section 300, subdivision (b). In support of her contention, Mother argued that the evidence indicated that she did not intentionally inflict harm on Nicole on April 6, 2011, but that Nicole leaned back onto the bed post, slipped and fell accidentally. Mother also argued that the evidence indicated that Nicole was not at risk of being physically harmed during the February 25, 2011 domestic violence incident between her parents. Counsel for DCFS, Father and Nicole argued that the allegations should be sustained under section 300, subdivision (a).

The juvenile court sustained the amended allegations under section 300, subdivision (a), and dismissed the allegations alleged under subdivision (b). Sustained allegation a-1 reads: “On 4/15/2011 [sic] the child Nicole M[.] and mother, Denise M[.], [were] engaged in a physical altercation resulting in mother pushing minor against a bed post, causing the child to strike the child’s back against the bed post knob and the child to fall to the floor. The child sustained injuries. Such physical altercation endangers the child’s health and safety and places the child at risk of physical harm, damage, danger and physical abuse.”

Sustained allegation a-2 reads: “On 2/25/11 the child, Nicole M[.]’s mother, Denise [M.] and father, Raul [M.] engaged in a violent altercation in which the mother was arrested and charged with spousal abuse. The mother’s ongoing violent behavior against the father in the child’s presence endangers the child’s physical health and safety and places the child at risk of physical harm, damage and danger.”

⁵ Mother explained to the investigator that she takes various pain medications for a genetic back condition. Mother stated that one of her medications is a Fentanyl patch.

At the August 10, 2011 disposition hearing, counsel for Mother, Father and Nicole asked the juvenile court to terminate jurisdiction with a family law order. Mother requested joint legal custody of Nicole. DCFS argued for continued jurisdiction and reunification services for Mother. DCFS reported that Nicole was happy living with Father and did not want to live with Mother.

The juvenile court declared Nicole to be a dependent of the court under section 300, subdivision (a). The court terminated dependency jurisdiction with a family law order awarding sole legal and physical custody of Nicole to Father and monitored visitation for Mother.

DISCUSSION

Mother contends there is insufficient evidence to support jurisdiction under section 300, subdivision (a).

DCFS argues that Mother forfeited this issue by not asking the juvenile court to dismiss the petition and by arguing below that the court should sustain the allegations under section 300, subdivision (b), instead of subdivision (a). We disagree. Mother argued below that there was insufficient evidence to sustain the allegations under section 300, subdivision (a)—the same issue she raises on appeal. Even if she had not raised the issue below, a challenge to the sufficiency of the evidence supporting jurisdictional findings is not waived by a failure to object on that basis below. (*In re Anthony G.* (2011) 194 Cal.App.4th 1060, 1064; see *In re M.B.* (2010) 182 Cal.App.4th 1496, 1506 [“claim that there is insufficient evidence to support the judgment is not waived by failure to object”].)⁶

⁶ DCFS also argues that Mother has forfeited her right to challenge the jurisdictional findings by failing to “specify in her notice of appeal [from the August 10, 2011 dispositional order] that she was appealing from the juvenile court’s jurisdictional findings.” This argument is without merit. “A jurisdictional order is only a finding. [Citation.] The dispositional order is the judgment. [Citation.] Only the judgment is

“““When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] In making this determination, all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.]”” [Citation.] While substantial evidence may consist of inferences, such inferences must rest on the evidence; inferences that are the result of speculation or conjecture cannot support a finding. [Citation.]” (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1258-1259.)

The juvenile court sustained the petition under section 300, subdivision (a), based on allegations regarding the physical altercation between Mother and Nicole in April 2011 (finding a-1) and Mother’s “ongoing violent behavior against” Father, including the February 25, 2011 violent altercation between Mother and Father (finding a-2).

Jurisdiction under section 300, subdivision (a), is appropriate where “[t]he 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 a 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.” (§ 300, subd. (a).)

The juvenile court’s assertion of jurisdiction under section 300, subdivision (a), was proper. Substantial evidence in the record shows that on April 6, 2011 Mother

appealable. [Citations.] On appeal from the judgment, the jurisdictional findings can be reviewed. [Citations.] (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 112, fn. omitted.)

pushed Nicole into a bed post during an argument about Nicole putting on her pajamas. The next day, Nicole tried to bend and felt pain in her back. At the hospital, she was diagnosed with a contusion to her back. Nicole rated her pain at a level seven on a scale from zero to 10. Substantial evidence demonstrates that Nicole suffered serious physical harm inflicted nonaccidentally by Mother. (§ 300, subd. (a).) Mother asks this court to reweigh the evidence and conclude that the April 6, 2011 incident was an accident. This we cannot do.

Mother argues that there was no risk of harm to Nicole at the time of the jurisdiction hearing because “the parents had separated and [F]ather had already been awarded custody of Nicole in the family court case.” Jurisdiction under section 300, subdivision (a), is proper based on a finding that the child “has suffered” serious physical harm inflicted nonaccidentally by the parent. (§ 300, subd. (a); *In re David H.* (2008) 165 Cal.App.4th 1626, 1641.)

Given our conclusion that jurisdiction under section 300, subdivision (a), was proper based on the April 6, 2011 physical altercation between Mother and Nicole, we need not determine whether jurisdiction also was proper based on Mother and Father’s history of domestic violence. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451 [“When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence”].)

Mother challenges the dispositional order, arguing that it lacks a sufficient basis because the juvenile court erred in finding jurisdiction. As discussed above, jurisdiction was proper. Mother does not challenge the dispositional order or the family law order on any ground other than a lack of sufficient evidence for jurisdiction.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.