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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re R.F. et al., Persons Coming Under
the Juvenile Court Law.

B234287
(Los Angeles County
Super. Ct. No. CK85580)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

PATRICIA F. et al.,

Defendants and Appellants.

APPEALS from orders of the Superior Court of Los Angeles County. Timothy R. Saito, Judge. Affirmed.

Aida Aslanian, under appointment by the Court of Appeal, for Defendant and Appellant Patricia F.

Michael A. Salazar, under appointment by the Court of Appeal, for Defendant and Appellant Reinaldo F.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Judith A. Luby, Principal Deputy County Counsel, for Plaintiff and Respondent.

Patricia F. (Mother) and Reinaldo F. (Father) appeal from the juvenile court's jurisdictional and dispositional orders as to their minor daughter, R.F., and their minor sons, V.F. and E.F.¹ The jurisdictional order as to all three children stems from Father's sexual molestation of the children's adult half sister, S.L., when she was a minor. We find that substantial evidence supports the jurisdiction order as to all three children and affirm.

BACKGROUND

In November 2010, around 2:00 a.m., 18-year-old S.L. came to Mother, crying and angry. She told Mother that Father (S.L.'s stepfather) had gone into the bedroom she shared with her brothers and sister and sexually molested her while she lay in her bed. Mother asked S.L. how Father had touched her, and S.L. said that Father had placed his hand inside her pajama bottom and touched her vagina with his fingers and also touched her breasts under her pajama top. Mother saw that at the time she had this conversation with S.L., Father was asleep on the couch in the living room. After Mother talked to S.L. about the incident for about half an hour, she called the police. The police called the Department of Children and Family Services (DCFS).

DCFS met with S.L. at the police station later that morning. S.L. told DCFS that Father had been molesting her for the last four or five years. He usually did what he had done that morning. He never penetrated her. S.L. said she never told Mother or anyone else about these incidents because she was afraid of Father. She stated, "I decided to tell my mom about the sexual abuse . . . about the touching . . . by my step dad because I got scared that my step dad was going to hurt me or my family . . . because he said that he was going to fuck up the family when I told him to stop touching me last night." S.L. told DCFS that as far as she knew Father had never molested the other children.

¹ The parents' notices of appeal include the juvenile court's dispositional orders. But because the parents do not address these orders in their briefs, we do not address them in our opinion.

DCFS interviewed Mother and the minor children at their home. The children told DCFS that they slept in the same bedroom with S.L. None of them reported any sexual touchings by Father, and none of them was aware of the current or any past episode of Father sexually abusing S.L. Mother told DCFS that she had sometimes wondered whether something “inappropriate” was happening between Father and S.L. She had noticed that Father would ask S.L. to massage his neck and feet. Mother told the police that in the last few months she had “walked in” on S.L. and Father several times in different rooms in the house, and that when she did, S.L. and Father “appeared to feel uncomfortable.” When she asked S.L. if Father had done or said anything wrong to her, S.L. always said no. Mother “was extremely concerned regarding father’s current mental health given father’s increasingly aggressive and bizarre behavior.”

At the detention hearing, the juvenile court found prima facie evidence that R.F., V.F., and E.F. were children described in Welfare and Institutions Code section 300 and that they could not be protected unless removed from Father’s care.² The court issued a temporary restraining order removing Father from the home and allowed the children to remain in the home with Mother.

The juvenile court held a jurisdictional hearing, commencing in February 2011. At the start of the hearing, the parties and the court agreed that the temporary restraining order against Father could be allowed to expire because Mother was informed that she must not allow Father into the home.

DCFS submitted a report of subsequent interviews with Mother, S.L., and the minors. Mother told DCFS that she wanted to believe S.L. about the sexual abuse, but she was not sure that S.L. was telling the truth. She showed DCFS the room where all four of the children slept and asked, “If [Father] did anything don’t you think the other kids would have seen?” (Subsequent evidence showed the beds were approximately two feet apart.) On the other hand, Mother said she asked Father about the sexual abuse allegations, and he replied, “If I did do it I have been forgiven,” and, “I never

² Undesignated statutory references are to the Welfare and Institutions Code.

penetrated her.”” Finally, Mother stated that although she wanted to believe her daughter, she was confused.

S.L. repeated her claim that Father molested her by putting his hand down her pajamas or pants and rubbing her vagina. This happened “a lot of times” when Mother was in her bedroom or away from home. Ten-year-old R.F. denied that Father or anyone else had touched her inappropriately. Seven-year-old V.F. stated Father “was asked to leave the home because he did something bad to [S.L.]” When asked if he knew what Father had done, V.F. stated that he did not. V.F. denied being touched inappropriately by Father or anyone else. Several times during the interview V.F. stated spontaneously, “I never saw anything.” Five-year-old E.F. stated that Father “was not in the home because of what he did.” When asked what Father had done, E.F. stated, “don’t know.” E.F. spontaneously stated that “dad has been mean to us” and “mom yells at us.” E.F. would not elaborate.

At the jurisdictional hearing, S.L. gave the same version of events that she had given to the police and DCFS. She testified that she did not tell Mother about Father’s abuse earlier because, “I thought she wouldn’t believe me.” She also testified that she now believed that if Mother had known that Father was touching her, Mother would “[t]ake him out of the house.”

Mother testified that she did not believe S.L.’s claim that she was molested by Father; nor did she believe that Father posed any risk to S.L. Referring to the alleged incident in November 2010, Mother stated, “I don’t believe it was possible for any [molestation] to happen this night without waking the other children up, especially my son.”³ Mother denied that she ever suspected anything improper was going on between S.L. and Father. She denied telling the police that she had walked in on S.L. and Father several times and that they appeared to be uncomfortable. She denied telling DCFS that Father asked S.L. to massage his feet and neck. She denied questioning S.L. about any

³ Mother apparently was referring to the son whose bed was about two feet from S.L.’s bed.

inappropriate behavior by Father. She denied Father said anything other than “no” when she asked him if he had molested S.L. Finally, she denied that when she asked Father about the molestation, he replied, ““If I did do it, I have been forgiven.””

R.F., who was nearly 11 at the time of the hearing, testified that Father never touched her inappropriately, and she did not know whether Father had ever touched S.L. inappropriately.

After the parties rested, the juvenile court declared the minors dependents of the court under section 300, subdivisions (b), (d), and (j). The court found that Father had been sexually abusing S.L. from the time she was 13 years old, and that Mother “is in denial with regards to [Father’s] sexual abuse [of S.L.]” The court determined “[s]uch sexual abuse of [S.L.] by [Father] and Mother’s denial of [S.L.’s] sexual abuse place[s] the children at risk of harm.” The children were allowed to remain in Mother’s care subject to unannounced visits to the home by DCFS. Both parents were ordered to attend counseling programs, and Father was allowed visits with the children monitored by someone other than Mother.

Mother and Father appealed.

DISCUSSION

I. Mother’s Appeal

A. Independent assessment of grounds for jurisdiction

DCFS contends that because we can uphold dependency jurisdiction based on abuse by one parent (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451), all we need to decide is whether Father’s conduct supports jurisdiction over the children. But as we pointed out in *In re Daisy H.* (2011) 192 Cal.App.4th 713, erroneous jurisdictional findings as to one of the parents could affect that parent in the future, estop the parent from relitigating those findings in another court, and insulate erroneous or arbitrary rulings from review. (*In re Daisy H.*, at p. 716 & fn. 4; see *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548.) Therefore, we proceed to determine whether substantial

evidence supports dependency jurisdiction over the children based on the conduct of Mother.

B. Jurisdiction over R.F., V.F., and E.F. under section 300, subdivisions (b), (d), and (j)

Section 300, subdivision (b) states in relevant part that jurisdiction over a child arises when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child” Section 300, subdivision (d) states in relevant part that jurisdiction over a child arises when “[t]he child has been sexually abused, or there is a substantial risk that the child will be sexually abused . . . by his or her parent . . . or the parent . . . has failed to adequately protect the child from sexual abuse when the parent . . . knew or reasonably should have known that the child was in danger of sexual abuse.” Section 300, subdivision (j) provides that jurisdiction over a child arises when “[t]he 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. 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 . . . and any other factors the court considers probative in determining whether there is a substantial risk to the child.”

The juvenile court found jurisdiction over the children under section 300, subdivisions (b), (d), and (j) based on its finding that Mother knew or should have known of Father’s sexual abuse of S.L., Mother had failed to protect S.L., and Mother is in denial regarding Father’s sexual abuse of S.L.

In order for us to affirm this ruling there must be substantial evidence that (1) Father sexually molested S.L.; (2) Mother denies that Father sexually molested S.L.; and (3) Mother’s denial places R.F., V.F., and E.F. at risk of harm from Father.

1. Father sexually molested S.L.

Substantial evidence supports the juvenile court's finding that Father sexually abused S.L. The most damning evidence came from Father himself when he told Mother, "If I did do it I have been forgiven," and, "I never penetrated her." Although Mother later denied telling DCFS that Father made those statements, the court found Mother's denial was not credible. In contrast, S.L.'s statements about the molestation were consistent throughout the proceedings, and the court found her testimony "to have been extremely credible."

2. Mother denies that Father sexually molested S.L.

Mother does not dispute that she disbelieves S.L.'s claims of sexual abuse by Father.

3. Mother's denial places R.F., V.F., and E.F. at risk of harm from Father under section 300, subdivisions (b), (d), and (j)

There is substantial evidence that Mother's denial places R.F. at risk under section 300, subdivisions (b), (d), and (j). Mother insists that Father did not sexually abuse S.L. despite his virtual confession that he did so—"If I did do it I have been forgiven," and, "I never penetrated her." R.F. is now close to the age that S.L. was when Father started molesting her. The record contains no promise by Mother that she would not permit Father to have unmonitored visits with R.F. or resume living in the same home with R.F. These factors, plus Father's virtual admission that he sexually molested R.F.'s sister, support the juvenile court's finding of jurisdiction under section 300, subdivisions (b), (d), and (j) based on a substantial risk that R.F. will suffer serious physical harm as a result of the failure or inability of Mother to adequately protect her. (See *In re Katrina W.* (1994) 31 Cal.App.4th 441, 447 [substantial evidence supported juvenile court's finding of jurisdiction over two and one-half year old daughter and infant son under section 300, subdivisions (b), (d), (i), and (j) where father sexually molested daughter and mother was in denial of molestation].)

California Courts of Appeal have disagreed about whether the younger brothers of a female victim of sexual abuse by a parent are at risk of similar abuse. (Compare cases concluding boys at risk *In re Andy G.* (2010) 183 Cal.App.4th 1405, 1414–1415 [§ 300, subds. (d), (j)]; *In re P.A.* (2006) 144 Cal.App.4th 1339, 1347 [§ 300, subds. (b), (d)]; *In re Karen R.* (2001) 95 Cal.App.4th 84, 90–91 [§ 300, subd. (d)]; *In re Edward C.* (1981) 126 Cal.App.3d 193, 203 [§ 300, subd. (a)] with cases concluding boys not at risk *In re Alexis S.* (2012) 205 Cal.App.4th 48, 55–56 [§ 300, subds. (b), (d)]; *In re Jordan R.* (2012) 205 Cal.App.4th 111, 138–139 [§ 300, subd. (d)]; *In re Maria R.* (2010) 185 Cal.App.4th 48, 68 [§ 300, subds. (d), (j)]; *In re Rubisela E.* (2000) 85 Cal.App.4th 177, 198–199 [§ 300, subd. (j)].)

Based on the circumstances of this case, we conclude that *In re Karen R.* is more on point. The *In re Karen R.* court held that where the minor daughter was raped by the father, the evidence showed the minor son “not only personally was the victim of sexual abuse as that term is used in section 300, subdivision (d), but also that he was at substantial risk of future sexual abuse.” (*In re Karen R.*, *supra*, 95 Cal.App.4th at p. 89.) The court cited *In re Rubisela E.*’s concession that “‘brothers of molested sisters can be molested . . . or in other ways harmed by the fact of the molestation within the family. Brothers can be harmed by the knowledge that a parent has so abused the trust of their sister. They can even be harmed by the denial of the perpetrator, the spouse[’]s acquiescence in the denial, or their parents’ efforts to embrace them in a web of denial.’” (*In re Rubisela E.*, *supra*, 85 Cal.App.4th at p. 198.)” (*In re Karen R.*, *supra*, 95 Cal.App.4th at p. 90.) The court in *In re Karen R.* also reasoned that “a father who has committed two incidents of forcible incestuous rape of his minor daughter reasonably can be said to be so sexually aberrant that both male and female siblings of the victim are at substantial risk of sexual abuse within the meaning of section 300, subdivision (d), if left in the home.” (*In re Karen R.*, *supra*, 95 Cal.App.4th at pp. 90–91.) And as observed in *In re P.A.*, *supra*, 144 Cal.App.4th 1339, the conclusion that a molesting father’s presence in the home places minors of opposite gender from that of the molested minor at

risk of sexual abuse is consistent with section 355.1, subdivision (d), which provides, in pertinent part, that a sustained allegation of sexual abuse of a child in a dependency proceeding constitutes prima facie evidence of substantial risk of abuse to that child's siblings. (*In re P.A.*, at p. 1347.) Thus, *In re P.A.* states, "Although section 355.1, subdivision (d), was not triggered here because there was no prior dependency proceeding at the time of the jurisdictional hearing, it nonetheless evinces a legislative determination that siblings of sexually abused children are at substantial risk of harm and are entitled to protection by the juvenile courts," regardless of gender. (*In re P.A.*, at p. 1347.)

We conclude that V.F. and E.F. are at risk. The juvenile court sustained the allegation that Father not only sexually abused S.L., but that Father "threatened to physically harm [S.L.], the children and the mother, when [S.L.] resisted the father's sexual abuse of [her]." Father molested S.L. in V.F.'s and E.F.'s presence. V.F. admitted Father "was asked to leave the home because he did something bad to [S.]" Although V.F. denied knowing what Father had done, several times during the interview with DCFS, V.F., without being asked a question, blurted out, "I never saw anything." Similarly, E.F. said Father "was not in the home because of what he did." When asked what Father had done, E.F. stated, "don't know." E.F. stated spontaneously that "dad has been mean to us" and "mom yells at us." E.F. refused to further elaborate. These statements are evidence of V.F.'s and E.F.'s apparent awareness of the ongoing molestation. Further, Father showed no concern for whether V.F. or E.F. might observe his sexual abuse of S.L. (See *In re Andy G.*, *supra*, 183 Cal.App.4th at p. 1414 [father's "total lack of concern" for whether minor son observed father's aberrant sexual behavior with minor daughters supported jurisdiction under section 300, subdivisions (d) and (j)].) What is more, Father threatened "to fuck up the family" when S.L. told Father to quit touching her. And Mother "was extremely concerned regarding father's current mental health given father's increasingly aggressive and bizarre behavior."

Given the circumstances surrounding Father's molestation of S.L. in the presence of V.F. and E.F. and their apparent awareness of the molestation while it was occurring in the same bedroom, notwithstanding their blurting out to the contrary; Father's lack of concern whether they knew of the molestation; Father's threats to the family; and Father's increasingly aggressive and bizarre behavior, we have no difficulty in concluding that V.F. and E.F. are at risk within the meaning of section 300, subdivisions (b), (d), and (j).

II. Father's Appeal

Father contends his conduct did not give rise to jurisdiction over the children under section 300, subdivisions (b), (d), or (j). We disagree with Father for the reasons expressed above.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

I concur:

CHANEY, J.

Rothschild, J. concurrence and dissental.

I concur in the majority's opinion upholding jurisdiction over R.F. based on the conduct of Mother and Father with respect to her half sister, S.L. I dissent, however, as to jurisdiction over the boys, V.F. and E.F.

The majority bases its decision that jurisdiction was properly asserted over the two boys under Welfare and Institutions Code section 300, subdivisions (d) and (j), on the ground that because father sexually abused his stepdaughter the boys were therefore at "substantial risk" (*ibid.*) of being sexually molested by father. There is, however, no evidentiary basis for the majority's speculation that the sexual abuse of a female child places her brothers at risk of sexual abuse. The DCFS presented no evidence to support that conclusion and, as pointed out in *In re Maria R.* (2010) 185 Cal.App.4th 48, 68, there is not "any scientific authority or empirical evidence to support the conclusion that a person who sexually abuses a female child is likely to sexually abuse a male child." Neither the majority nor DCFS contends that the scientific landscape has changed since the *In re Maria R.* decision.

As an alternative ground for jurisdiction under subdivisions (d) and (j), the majority asserts that the boys were aware of the ongoing molestation of their stepsister, S.L., which made them victims of sexual abuse themselves. Again, however, the evidence does not support the conclusion that the boys were aware of father's sexual molestation of S.L. On the contrary, S.L. testified that the boys were not aware and the boys told the DCFS that "they never observed their father touching [S.L.] inappropriately."

Although the majority does not specify the grounds on which it upholds jurisdiction under subdivision (b) the majority appears to rely on what it describes as "Father's threats to the family [and] increasingly aggressive and bizarre behavior[.]" (Maj. opn. *ante*, at p. 10)

Section 300, subdivision (b) states in pertinent part that the court has jurisdiction when: "The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent

or guardian to adequately supervise or protect the child” It goes on to provide that “[t]he child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.” In this case, jurisdiction over the boys under subdivision (b) required proof that Mother failed to protect them from “Father’s threats” and “aggressive and bizarre behavior.” The record contains no such proof.

On the last occasion that Father tried to molest S.L. he threatened her with “fuck[ing] up the family.” Assuming Father’s threat to “fuck up the family” was a threat of physical violence and not a warning of the consequences to the family if the police and child welfare agency were to become involved, there is no evidence that Mother knew about this threat much less that she failed to protect the boys from harm. Father’s “aggressive behavior” consisted of “yells and curses” at Mother and the children. Yelling and cursing is not a ground for dependency jurisdiction and, in any event, Mother dealt with the situation by asking Father to leave the house so she did not fail to protect the boys from Father’s behavior.

ROTHSCHILD, J.