Filed 3/6/18 In re Daniel Z. CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re DANIEL Z., a Person Coming Under the Juvenile Court Law.	B284174 (Los Angeles County Super. Ct. No. DK05972)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. DANIEL Z., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Karin Borzakian, Commissioner. Affirmed.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Peter Ferrera, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Daniel Z., born in 2017, appeals from the dispositional order of the juvenile court. He challenges the jurisdictional findings on which the court declared him a dependent under Welfare and Institutions Code section 300, subdivisions (b) and (j).[1] Because there is substantial evidence in the record to support the jurisdictional findings, we affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The dependency of Daniel's older siblings and half-siblings*

Viewing the evidence according to the usual rules (*In re I.J.* (2013) 56 Cal.4th 766, 773), it shows that mother and father have a history of domestic violence and father drank alcohol.[2] Although mother and father separated several times, they always reunited. Mother persisted in having contact with father in spite of a restraining order against him that she obtained in 2012.

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

[2] Neither mother nor father is a party to this appeal.

Daniel's siblings' dependency was triggered in 2014 after the Department of Children and Family Services (the Department) responded to a referral about a violent incident between the parents. Mother stated she stopped using drugs in 2003 after she underwent treatment. She claimed she did not drink alcohol.

The juvenile court sustained a petition in late 2014 alleging that mother's children – Briana M., Marcos G., Genevieve M., Victor M., and Victoria M. – were at risk of harm because of mother's and father's history of engaging in altercations in the children's presence that injured mother. Father was under the influence of alcohol during at least one of the altercations. Continuing, the petition alleged that mother failed to protect the children by allowing father to remain in the home with them. (§ 300, subd. (b).) The court issued a restraining order against father that would expire on December 8, 2017. Rather than to remove the children from mother's custody, the court ordered family preservation services.

Mother failed to sign the necessary forms for family preservation services and so the case was closed in January 2015. Mother continued to resist services and did not respond to the social workers' attempts to contact her through July 2015. She also failed to verify that the children had seen their physician and dentist. Although she claimed to have taken the children for vaccinations, the doctors' office had no record of it, and so Genevieve could not enroll in school. Two of the children did not undergo court-ordered counseling because mother failed to take them to the therapist or to complete the intake forms. Family preservation services were terminated again in September 2015 for lack of participation. Briana did not want to live with mother

and was concerned about her siblings' well-being in mother's care because the family frequently moved and mother did not ensure regular medical examinations.

As the family constantly changed residences, the Department reported in April 2016 that its numerous attempts to contact mother in person and by telephone were unsuccessful. Hence, the juvenile court issued a protective custody warrant for the children and only recalled it after mother surrendered them to the maternal aunt.

The Department filed a supplemental petition naming Daniel's siblings.[3] (§ 387.) As sustained in August 2016, the supplemental petition alleged that mother failed to comply with the court's orders and failed to ensure that the children received family preservation services, thereby endangering their emotional well-being. (§ 300, subd. (b).) The juvenile court also found true the petition's allegation that Briana did not want to return to mother's care.

The juvenile court ordered the children removed from mother's custody (§ 361, subd. (c) [requiring clear and convincing evidence of substantial danger to the children's health, safety, protection, or physical or emotional well-being if returned to mother's custody, and no reasonable means by which they could be protected without removal]). The court ordered family reunification services for mother that required her to participate in a domestic violence program and Al-Anon, to submit to two consecutive random or on-demand drug tests, and then to test on suspicion. If she missed any test or tested positive, mother would

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[3] Half-sibling Marcos was not named in the supplemental petition because the juvenile court had terminated its jurisdiction over him by the time the section 387 petition was filed.

have to undergo a full drug-rehabilitation program with random testing. The court also ordered mother to enroll in parenting classes and individual counseling, to participate in all of the children's medical and dental appointments, and to comply with all restraining orders. Mother received monitored visitation with the children.

3. *Daniel*

In January 2017, nine months after the juvenile court sustained the supplemental petition and removed the children from mother's custody, mother gave birth to Daniel. The Department filed a petition on his behalf. Social worker Juan Lara met with mother and her counselor as part of an assessment of the safety and risk to newborns in families already under Departmental supervision. Lara learned that Daniel was healthy at birth with no indication of substance abuse by mother. Mother had been residing in a treatment program for less than two months where she was reportedly compliant with treatment, attending substance abuse, parenting, and domestic violence prevention classes, and producing negative test results. She was allowed to keep Daniel with her at the facility.

Nonetheless, social worker Lara was concerned that Daniel was at risk of harm. Mother admitted to Lara that she voluntarily entered the residential treatment facility because she had been drinking alcohol. Lara noted, after flouting court orders for two years, that mother had barely begun to comply with her case plan, having participated for less than two months. Following her pattern of ignoring her children's medical, dental, and educational needs that resulted in the removal of her older children from her custody, mother failed to seek prenatal care during her pregnancy with Daniel. Lara also discovered that

mother was jailed six months before Daniel's birth for cashing fraudulent checks. He concluded that mother was a flight risk because of her history of moving without informing the Department of her whereabouts.

Mother admitted she saw father while the restraining order was in effect and later acknowledged that he was Daniel's biological father. She claimed she saw father only once. However, social worker Lara, who had been assigned to this family since December 2014, testified that " 'according to other people,' " including mother's seven-year-old, mother was practically living with father during the two years she was not complying with the juvenile court's orders.

By April 2017, mother had completed the residential portion of her treatment, along with a parenting course, and was still working on the rest of her reunification plan. She moved to the outpatient program but again did not notify the Department of her whereabouts.

At the adjudication hearing, social worker Lara testified about his opinion that mother properly cared for Daniel while she was in her residential program where people were watching her. Yet, once she was on her own, he felt that she would be unable to adequately attend to Daniel's needs. He articulated the Department's opinion that none of mother's children could yet be safely returned to her because she had not completed her court-ordered programs. Furthermore, Lara testified that mother was living with another person about whom Lara had no information. Without an address for mother or the name of her roommate, the Department could not assess whether it was safe for Daniel to live with mother, nor recommend that Daniel be placed with her.

A month later, when the hearing resumed, mother's counsel informed the court of mother's address and that mother was living with a nephew. Having just learned of mother's address from the children's aunt, the Department had not had an opportunity to assess the home's safety.

After hearing the evidence and argument, the juvenile court sustained the petition, as amended to conform to proof, alleging that:

> "The child Daniel [Z.'s] mother Alicia [Z.] has a history of engaging in altercations with the child's siblings['] . . . mother's male companion, Victor [M.], father of the children Genevieve, Victor[,] Victoria, and Daniel in the presence of the child's siblings. On 10/04/2014, the mother and the [M.] father engaged in an altercation during which the father caused injury to the mother. The [M.] father was under the influence of alcohol during at least one of the altercations. The mother failed to protect the child's siblings by allowing the [M.] father to remain in the home with the mother and the child's siblings despite a restraining order. The child's mother failed to comply with the Juvenile Court orders to regularly attend a domestic violence counseling program. The [M.] father's conduct towards the mother, and the mother's failure to protect the siblings, places the child Daniel [Z.] at substantial risk of serious physical harm, damage, danger and failure to protect." (§ 300, subds. (b) & (j).)

The juvenile court expressed concern that mother had violated the court's orders in the past, most significantly the

order restraining mother and father from having contact with each other. The court found that mother had "a continuing relationship with" father and so the court had "limited faith" that mother would stay away from father. Also mother had only just begun her services. The child was at substantial risk of harm if father was in the picture and where mother has a history of substance abuse and a track record of harm as evidenced by her conduct with the older children. After declaring Daniel to be a dependent, the court released him to mother's custody under the condition that mother communicate with the social workers, alert the Department when she moves, make herself and the child available to the social workers during unannounced house calls; cooperate in making and keeping appointments; test regularly; and have no contact with father. Daniel, but not mother, brought the instant appeal.

CONTENTION

Daniel contends that the evidence is stale and does not establish that he was at current risk of harm.

DISCUSSION

We review jurisdictional findings to ascertain " 'if substantial evidence, *contradicted or uncontradicted*, supports them.' " (*In re I.J.*, *supra*, 56 Cal.4th at p. 773, italics added.) " ' "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; and we note that issues of fact and credibility are the province of the trial court." [Citation.] "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.] " ' "[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate]." ' [Citation.]" ' " (*Ibid.*)

Here, the juvenile court declared Daniel a dependent under subdivisions (b) and (j) of section 300. Focusing our analysis on section 300, subdivision (j), it applies when "(1) the child's sibling has been abused or neglected as defined in specified other subdivisions and (2) there is a substantial risk that the child will be abused or neglected as defined in those subdivisions. (§ 300, subd. (j).)"[4] (*In re I.J.*, *supra*, 56 Cal.4th at p. 774.)

Daniel's siblings are dependents of the juvenile court because the court found they were neglected as defined by section 300, subdivision (b) based on the parents' history of domestic violence and father's drinking, mother's failure to protect the children from father by allowing him into the home, and mother's failure to comply with the court's orders and to ensure that the children received their services. Those rulings are final. Thus, the first requirement of subdivision (j) has been

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[4] Subdivision (j) of section 300 reads: "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. 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 or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child."

met. (Cf. *In re I.J.*, *supra*, 56 Cal.4th at p. 774 [first requirement of § 300, subd. (j) is met where sibling was abused as defined in subd. (d)].)

Turning to the second requirement of subdivision (j) of section 300, that subdivision " '*was intended to expand the grounds for the exercise of jurisdiction* as to children whose sibling has been abused or neglected as defined in section 300, subdivision (a), (b), (d), (e), or (i). Subdivision (j) *does not* state that its application is limited to the risk that the child will be abused or neglected *as defined in the same subdivision* that describes the abuse or neglect of the sibling. Rather, subdivision (j) directs the trial court to consider whether there is a substantial risk that the child will be harmed under subdivision (a), (b), (d), (e) *or* (i) of section 300, notwithstanding which of those subdivisions describes the child's sibling.' [Citation.]" (*In re I.J.*, *supra*, 56 Cal.4th at p. 774, first italics added.)

Subdivision (j) uniquely lists factors for the court to consider. It states: "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 or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child." (§ 300, subd. (j).) Hence, subdivision (j) " 'allows the court to take into consideration factors that might not be determinative if the court were adjudicating a petition filed directly under one of those subdivisions. [¶] The broad language of subdivision (j) clearly indicates that the trial court is to consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm, within the

meaning of *any* of the subdivisions enumerated in subdivision (j). The provision thus accords the trial court greater latitude to exercise jurisdiction as to a child whose sibling has been found to have been abused than the court would have in the absence of that circumstance.' [Citation.]" (*In re I.J.*, *supra*, 56 Cal.4th at p. 774.)

Considered according to the rules of appellate review, the record amply supports the juvenile court's conclusion that Daniel is at substantial risk of harm within the meaning of section 300, subdivisions (j) and (b). As the court explained, mother has a history of failing to protect her children from her violence with father, of failing to ensure that the children receive medical and dental care, and of failing to keep the Department informed of her whereabouts so that it may monitor the children's health and safety. The very reason mother lost custody of Daniel's siblings was that she failed to comply with her case plan. As the court noted, although mother had "a very generous amount of time," she nonetheless just began working on her reunification plan having only very recently completed an inpatient portion of her rehabilitation program. Mother should be commended for voluntarily entering residential rehabilitation and completing some aspects of her case plan. However, she has not resolved the issues that triggered the dependency of her older children and that justified their removal from her custody and so the Department concluded that the children remained at risk. More important, mother repeated the behaviors with Daniel that had triggered his siblings' dependency. Mother had sustained contact with father in spite of the restraining order; she failed to seek prenatal medical care while pregnant with Daniel; and she failed to inform the Department of her change of address when she left

her residential treatment facility. This is ample evidence that Daniel, who is extremely young and vulnerable, is at substantial risk of harm as defined by section 300, subdivision (b) and supports the juvenile court's order declaring him a dependent under subdivision (j) of that section.

Daniel contends that the juvenile court relied on stale evidence, which in any event did not establish that *Daniel* was at current risk of harm. He argues that the siblings' dependency was based on a single incident of domestic violence in 2014 and there have been no reports of violence since then. He observes that there are no reports of contact between the parents with the exception of a single encounter that resulted in Daniel's conception.

Daniel misunderstands our task on appeal. We review the record in the light most favorable to the juvenile court's findings and draw all reasonable inferences from the evidence to support those findings. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) Although mother claimed that she only saw father once, when Daniel was conceived, the court believed social worker Lara's testimony indicating that mother had almost constant contact with father throughout the two years that she was ignoring her case plan requirements. We may not reweigh that evidence. Furthermore, the siblings' petition alleged more than a single incident of domestic violence; the sustained allegation is that the parents "have a history of engaging in altercations in the presence of the children." The risk of harm to Daniel is not that the parents engaged in violence years before he was born, but that his siblings were neglected as defined by section 300, subdivision (b) and, pursuant to subdivision (j), Daniel is at risk of harm as defined in subdivision (b) because, notwithstanding her slight

compliance with her services, mother continues engaging in the same conduct that triggered the siblings' dependency.

Daniel cites four cases he believes support his position. In all four cases, the appellate courts reversed the orders declaring the children dependents under section 300, subdivision (b) because the evidence of risk of harm was either insufficient or stale. (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1454 [no evidence of current risk of harm from single incident of domestic violence seven years before the jurisdiction hearing]; *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717 [no evidence of current risk of harm where domestic violence occurred either two or seven years before the petition was filed and not seen by the children]; *In re C.V.* (2017) 15 Cal.App.5th 566, 572-573 [no evidence of current risk of harm to infant from unloaded shotgun located inside backpack wedged between the mattress and wall, where the child was an infant and the gun-owner was incarcerated]; *In re Joaquin C.* (2017) 15 Cal.App.5th 537, 563 [no evidence of current risk of harm where mentally ill mother was living with " 'strong family support system' " and appropriately caring for son].) All four cases are inapposite as none involves allegations under section 300, subdivision (j), which expands the grounds for exercise of jurisdiction. Here, by contrast, the evidence that Daniel contends is stale supported the *siblings*' petition and supplemental petition. Daniel's dependency by contrast, is based on sufficient current evidence that Daniel is at substantial risk of harm because mother continues to flout juvenile court orders and persists in engaging in the same unsafe behaviors that caused his siblings' dependency. (§ 300, subds. (b) & (j).)

"[S]ection 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction. The subdivisions at issue here require only a 'substantial risk' that the child will be abused or neglected. The legislatively declared purpose of these provisions 'is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children *who are at risk of that harm*.' [Citation.] 'The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.' [Citation.]" (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) The record here shows that Daniel is at substantial risk of suffering serious physical harm or abuse as defined in section 300, subdivision (b) because mother persists in exposing her children to father, flouting court orders, and failing to attend to the children's medical and psychological needs. Therefore, jurisdiction over Daniel is warranted under section 300, subdivision (j).

DISPOSITION

The order is affirmed.

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DHANIDINA, J.*

We concur:

EDMON, P. J.

LAVIN, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.