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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re R.G., a Person Coming Under
the Juvenile Court Law.

B277286
(Los Angeles County
Super. Ct. No. DK15932)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.G. et al.,

Defendants and Appellants.

APPEAL from orders of the Superior Court of Los Angeles
County, Julie Fox Blackshaw, Judge. Reversed.

Jack A. Love, under appointment by the Court of Appeal,
for Defendant and Appellant B.G.

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

Mary C. Wickham, County Counsel, and Peter Ferrera, Principal Deputy County Counsel, for Plaintiff and Respondent.

R.G. (father) and B.G. (mother) appeal from a dependency jurisdictional order finding that the juvenile court had jurisdiction over their 16-year-old son, R.G., pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b)(1).¹ Father and mother contend the juvenile court erred in not dismissing the dependency petition when it found that conditions justifying the initial assumption of jurisdiction no longer existed at the time of the combined jurisdiction and disposition hearing. We agree, and reverse.

BACKGROUND

The family consists of father, mother, and R.G. At the time at issue, three daughters of mother's brother lived with the family: Jessica (then age 17), Liliana (then age 16), and Nancy (then age 12) (collectively, the cousins). Father and mother had become the cousins' legal guardians after their parents died in 2006 under violent circumstances. (The cousins' older sister, Jocelyn, had also lived with the family, but moved out before the time at issue.)

In February 2016, the Department of Children and Family Services (DCFS) conducted an investigation into the parents' treatment of the cousins. In interviews with a DCFS social worker, the cousins stated that both mother and father had been abusing them for the past couple of years. Mother pushed the

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

cousins, and hit them with her hands, wooden spoons, and cables. She punished Jessica and Liliana by forcing them to wake up at 5:00 a.m. and run laps in the backyard. On a few occasions, mother punished Jessica and Liliana by not allowing them inside the house, forcing them to sleep in a shed in the yard. Mother rubbed “chile (hot sauce)” on Jessica’s vaginal area when she suspected Jessica of having sex with her boyfriend. Father also hit the cousins, including with a belt. Both mother and father verbally abused the cousins, as well.

The cousins said R.G. saw his parents hit and verbally abuse them. Liliana said mother had hit R.G. on his back with her hand and a spoon a long time ago, and father and mother had hit him on his head. Jessica said mother had hit R.G. on his back with her hand once a long time ago. R.G., however, denied his parents hit him or the cousins, and said the cousins were lying. He said he had never seen his parents hit or scream at the cousins. He said he felt safe in the home.

The investigation led to the cousins being detained from the parents on March 3, 2016, for allegations of physical and emotional abuse. The following day, DCFS received a report about R.G. based on the parents’ abuse of the cousins.

On March 8, 2016, DCFS filed a petition pursuant to section 300, subdivisions (a) and (b)(1), alleging in multiple counts that mother’s and father’s treatment of the cousins placed R.G. at risk of “serious physical harm, damage, danger, physical abuse and failure to protect.”

After the cousins were removed from the home, they were placed with a maternal aunt and uncle, and neither the cousins nor mother or father wanted to reunify. R.G. remained in the home with his parents throughout the proceedings.

DCFS conducted further interviews for the jurisdiction/disposition report. The cousins repeated their prior statements about how mother and father treated them. Jessica said that R.G. was the only child who was not hit, and that he was treated differently and was favored. Mother and father denied all allegations against them, claimed the cousins were lying, and said they had behavioral problems, such as stealing. R.G. also denied his parents treated the cousins as they claimed, and said they might be making things up because they wanted freedom. He denied his parents had told him to withhold information from DCFS.

DCFS also interviewed the children's school counselors. R.G.'s counselor stated he had no serious issues. In February 2016, the counselor met with mother and father about R.G.'s failing two math classes, and saw no red flags after that meeting.

At the combined jurisdiction/disposition hearing, the juvenile court found the cousins' statements believable and believed R.G. had witnessed the events of abuse the cousins described. The court stated it did not find R.G. had been physically abused, but said his exposure to his parents' behavior was damaging, and the fact that he lived with parents willing to inflict cruelty on other children put him at risk of physical danger. The court sustained the petition as pled, and declared R.G. a dependent of the court.

Moving to disposition, the court said the evidence showed that R.G. was not treated the same as his cousins and that he felt safe in the home. It found that R.G. was old enough and able to protect himself. Noting the cousins had been removed from the home, the court found no need for further services for R.G. or his parents. The court declined to remove R.G. from his parents'

custody and terminated jurisdiction. The minute order for the hearing stated, “The court finds that those conditions which would justify the initial assumption of jurisdiction under WIC section 300 no longer exist and are not likely to exist if supervision is withdrawn and the court terminates jurisdiction this date.”

Father and mother each timely appealed the juvenile court’s jurisdictional findings and orders.

DISCUSSION

Father and mother both contend insufficient evidence supported the juvenile court’s finding that it had jurisdiction, and the petition should instead have been dismissed. Without conceding error, DCFS does not oppose reversal of the jurisdictional findings. We agree the juvenile court should have dismissed the petition.

A child comes within the jurisdiction of the juvenile court under subdivision (a) of section 300 if the “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.” (§ 300, subd. (a).) For 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 that indicate the child is at risk of serious physical harm.” (*Ibid.*)

Subdivision (b) similarly provides for jurisdiction if a child “has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness,” but for purposes of this subsection, the serious physical harm or illness, or substantial

risk thereof, must result from “the failure or inability of [the child’s] parent or guardian to adequately supervise or protect the child,” the “failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or . . . the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness” (§ 300, subd. (b)(1).)

We review jurisdictional and dispositional orders for substantial evidence, viewing the record as a whole in the light most favorable to the juvenile court’s order and indulging every inference and resolving all conflicts in favor of the court’s decision. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649.) “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 making this determination, all conflicts are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.] In dependency proceedings, a trial court’s determination will not be disturbed unless it exceeds the bounds of reason.” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.)

“Cases finding a substantial physical danger tend to fall into two factual patterns. One group involves an *identified, specific hazard* in the child’s environment—typically an adult with a proven record of abusiveness. [Citations.] The second group involves children of such tender years that the absence of adequate supervision and care poses an inherent risk to their physical health and safety.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) “While evidence of past conduct may be probative of

current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.” (*Ibid.*) Thus, past physical harm, “standing alone, does not establish a substantial risk of physical harm; [t]here must be some reason to believe the acts may continue in the future.” (*Ibid.*)

Here, no evidence shows R.G. suffered any prior serious physical harm, and the juvenile court found R.G. was not physically abused. Accordingly, the issue is whether the evidence supports the juvenile court’s finding that R.G. was at substantial risk of serious future injury at father’s or mother’s hands. We discern none.

The petition alleged that R.G. was at risk of serious physical harm because father and mother physically abused the cousins and placed them in endangering situations by forcing them to sleep outside the house. But no evidence showed R.G. was ever subjected to similar treatment throughout the time the cousins resided with the family. Statements by the cousins suggested only that R.G. may have been hit on his back and head in the distant past, but there was no evidence that he suffered any serious physical harm as a result. Moreover, Jessica stated in an interview that R.G. was treated differently and more favorably than the cousins, and was not hit. R.G. consistently denied being hit or treated badly by his parents, and said he felt safe at home. His school counselor observed no red flags after meeting with R.G.’s parents, and said R.G. had no serious issues at school. DCFS found R.G. to be physically healthy and his parents to be involved in his education.

Further, the juvenile court itself found that conditions that would justify the assumption of jurisdiction no longer existed at

the time of the hearing. We agree no evidence suggested any reason that R.G. might be subject to a risk of serious physical harm in the future. He expressed no concern about staying with his parents. He was 16 years old at the time of the hearing, old enough to avoid many physical dangers from which younger children would be less able to protect themselves. (Cf. *In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 825.) Also, the cousins no longer resided with the family at that time, removing any risk to R.G. related to his parents' treatment of them. At the hearing, DCFS counsel suggested R.G.'s parents might treat him differently now that the cousins were not in the home. But no evidence suggested that would happen, and speculation is not substantial evidence. (*In re David M.* (2005) 134 Cal.App.4th 822, 830.) No other reason was offered, or is apparent, for a future risk that R.G. might suffer serious physical harm.

We conclude no substantial evidence supported the juvenile court's finding that because R.G.'s parents inflicted physical abuse on the cousins, R.G. was himself at risk of serious physical harm. The court therefore abused its discretion in asserting jurisdiction.

Without proper jurisdiction, the juvenile court had no authority to issue a dispositional order. (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1261.)

DISPOSITION

The juvenile court's orders are reversed.

NOT TO BE PUBLISHED.

CHANNEY, Acting P. J.

We concur:

JOHNSON, J.

LUI, J.