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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re MICHAEL A., a Person
Coming Under the Juvenile
Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MIGUEL A.,

Defendant and Appellant.

B279824

(Los Angeles County
Super. Ct. No. CK99472)

APPEAL from an order of the Superior Court of Los Angeles County, Julie F. Blackshaw, Judge. Affirmed.

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

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Father, Miguel A., challenges the juvenile court's order sustaining dependency jurisdiction over his infant son, Michael A., based on Father's domestic violence against Mother, Maria R.¹ Father contends there is no substantial evidence that Michael was at risk of suffering serious physical harm, because the one documented incident of domestic violence between him and Mother took place over a year before the jurisdictional hearing. We disagree and affirm.

FACTS AND PROCEDURAL BACKGROUND

Consistent with our standard of review, we state the facts in the light most favorable to the juvenile court's findings, drawing all reasonable inferences in favor of the court's judgment. (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 329; *In re Veronica G.* (2007) 157 Cal.App.4th 179, 185 (*Veronica G.*).

The current dependency proceeding began in September 2016, when the Los Angeles County Department of Children and Family Services (the Department) received a call from a hospital social worker regarding Michael's birth. While the hospital had no immediate concerns regarding Michael's safety, the social worker reported that Mother had an open dependency case concerning the newborn's older siblings.

The Department's subsequent investigation confirmed that, in 2013, the newborn's two older half siblings, Emily S. and Stephanie T., were declared dependents based on sustained allegations of parental neglect stemming from a history of domestic violence. Those allegations concerned Mother's relationship with Emily's father, Juan S., who had hit Mother with a closed fist, causing serious injuries that required three

¹ Mother is not a party to this appeal.

stitches to her eyebrow. Stephanie was present during the incident. Records in the case also disclosed a prior domestic violence incident involving Mother and Stephanie's father, Juan T. The juvenile court ordered Mother to attend parenting classes, a conflict resolution program, and individual counseling to prevent domestic violence; however, Mother failed to comply with the court orders. In January 2015, the court terminated family reunification services and initiated permanent placement services for Emily and Stephanie.

Following the investigation of Mother's child welfare history, a social worker met with Mother and Father to discuss the Department's concerns regarding newborn Michael. The social worker advised Mother that she needed to enroll in the programs the juvenile court had ordered her to complete in the open dependency case for her older children. Mother said she would, and Father stated he was willing to participate in programs if necessary to keep Michael from being detained.

On September 29, 2016, the Department received confirmation that Mother had begun attending weekly parent support group meetings with some component of domestic violence counseling. The social worker assigned to Michael's case nevertheless remained concerned that Mother had not yet made substantial progress in her court-ordered services.

Thus, on October 3, 2016, the Department filed a non-detained dependency petition on Michael's behalf. The petition alleged that dependency jurisdiction should be taken over Michael pursuant to Welfare and Institutions Code section 300,

subdivisions (a), (b), and (j) based on the domestic violence between Mother and Juan S. that occurred in 2013.²

In November 2016, the Department interviewed the parents in advance of the jurisdiction hearing. Mother reported she and Father argued, but he never struck her, and one of them always left the home until they had calmed down. Father said he was aware of Mother's domestic violence history and that he spoke to Mother about the risk posed to her children by living in an abusive environment. He likewise reported that there had never been domestic violence between him and Mother.

After the initial referral, the Department investigated the parents' criminal history through the California Law Enforcement Telecommunications System (CLETS). The CLETS report indicated a "hit" for Father, but did not provide specific information regarding the crime. When the Department asked Father about his criminal history, he claimed the only infraction he could remember was a traffic ticket for driving without a license.

Contrary to Father's account, the Department discovered a police report, dated December 13, 2015, concerning a domestic violence incident between Mother and Father. According to the report, Father had consumed a great deal of alcohol during a birthday party outside the parents' home. When Mother attempted to take the bottle from him, a verbal argument ensued, which intensified into Father grabbing Mother by the shoulders, shaking her, and ultimately scratching and punching her in the face. Police responded to the incident and found Father locked in a room in the home. With Mother's permission, the officers

² Statutory references are to the Welfare and Institutions Code unless otherwise stated.

forced entry and took Father into custody. The police report noted that Father was under the influence of alcohol and that Mother was scared, crying and in fear for her safety.

After obtaining the police report, the Department re-interviewed the parents concerning their past domestic violence. Both parents denied the incident had occurred as reported, but their accounts differed in fundamental respects. Mother claimed the altercation actually involved her and another woman, both of whom had been drinking, and she claimed that Father intervened to break up the fight. Mother said Father was inside the house when the incident began, he had not been drinking, and he stepped between Mother and the other woman to stop them from hitting each other. When asked if she could explain why the police report stated the fight was between her and Father, Mother responded: “ ‘Oh, no, I don’t know why, he just helped me. He never hit me.’ ”

As for Father, he likewise claimed the incident involved Mother and another woman. However, Father admitted he had been drinking during the party and claimed he was sleeping when the altercation began. He said the sound of fighting woke him and, when he intervened to break up the fight, he “by accident . . . hit the other lady.” When asked about the police report, Father responded, “ ‘Domestic violence between [Mother] and me no, never, we are fine, by then she was already pregnant, but we did not know, since after we have been doing well.’ ” Mother similarly stated, “ ‘We did not know I was pregnant by then, but since then we are fine, we don’t fight.’ ”

On November 30, 2016, the Department filed a first amended petition, adding counts under section 300, subdivisions (a) and (b) regarding the December 2015 domestic violence incident and Mother's history with domestic abuse. The amended petition also added a count under section 300, subdivision (b) concerning Father's alcohol intoxication during the December 2015 incident.

On December 19, 2016, the court held a combined jurisdiction and disposition hearing on the amended petition. After indicating its tentative decision was to dismiss the counts related to the domestic violence incidents involving Juan S., and to sustain those pertaining to domestic violence between Mother and Father, the court invited argument from counsel.

Mother's counsel argued the latter counts should be dismissed because (1) Michael was not born when the December 2015 incident occurred, (2) the incident was a year old and there was no evidence of subsequent domestic violence between Mother and Father, and (3) Mother had enrolled in a domestic violence program and parenting class. Father joined with Mother in arguing for dismissal of the domestic violence counts and argued the alcohol abuse count should also be dismissed because there was no evidence of ongoing alcohol abuse.

The minor's counsel argued the domestic violence count pertaining to Michael's parents should be sustained. Counsel emphasized that Father was Mother's third partner to have physically abused her and that Mother had failed to follow through with services that would have helped her avoid such relationships.

The Department joined the minor's counsel with respect to sustaining the domestic violence allegation. In addition to Mother's history with domestic violence, the Department stressed that the parents had concealed and then lied about the December 2015 incident, which indicated they were unlikely to address the underlying causes without court supervision.

The juvenile court sustained the section 300, subdivision (b) count pertaining to the parents' domestic violence, and dismissed all other counts. The court found the December 2015 police report credible, and concluded the parents' attempts to deceive the Department demonstrated they were unlikely to remedy the problem without court supervision, leaving Michael at risk. The court also found Mother's history of domestic violence and failure to remediate it in her daughters' dependency case corroborated the substantial risk finding with respect to Father's and Mother's domestic violence.

As for disposition, the court ordered the minor to remain in the parents' custody under the Department's supervision, with family maintenance services in place for Father and Mother.

DISCUSSION

1. *Evidence of Past Domestic Violence Is Sufficient to Authorize Dependency Jurisdiction; Legal Principles and Standard of Review*

The juvenile court assumed jurisdiction under section 300, subdivision (b) based on the risk of harm posed by the parents' history of domestic violence. A child is within the jurisdiction of the juvenile court under subdivision (b) of section 300 "if he or she 'has suffered, or there is a substantial risk that the child will suffer, serious physical harm,' . . . from 'the failure or inability of his or her parent or guardian to adequately supervise or protect

the child’ [D]omestic violence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.’ ” (*In re E.B.* (2010) 184 Cal.App.4th 568, 575–576 (*E.B.*) “ ‘Both common sense and expert opinion indicate spousal abuse is detrimental to children.’ ” (*Id.* at p. 576; *In re Benjamin D.* (1991) 227 Cal.App.3d 1464, 1470, fn. 5.) “ ‘[P]ast violent behavior in a relationship is “the best predictor of future violence.” Studies demonstrate that once violence occurs in a relationship, the use of force will reoccur in 63% of those relationships.’ ” (*E.B.*, at p. 576, quoting Comment, *Beating Again and Again and Again: Why Washington Needs a New Rule of Evidence Admitting Prior Acts of Domestic Violence* (2000) 75 Wash. L.Rev. 973, 977-978.)

“The basic question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.” (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134, italics added.) Although “evidence of past conduct may be probative of current [risk] conditions” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 (*Rocco M.*), “there must be some reason beyond mere speculation to believe [that previous neglectful acts] will reoccur.” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 565; *In re J.N.* (2010) 181 Cal.App.4th 1010, 1025 (*J.N.*) [same].)

Nevertheless, it is equally well-recognized that the “nature and circumstances of a single incident of harmful or potentially harmful conduct may be sufficient, in a particular case, to establish current risk depending upon present circumstances.” (*J.N.*, *supra*, 181 Cal.App.4th at p. 1026; see *In re John M.* (2013) 217 Cal.App.4th 410, 419 [past incident of domestic violence

resulting in father's incarceration supported jurisdiction based on current risk of harm to child].) Moreover, “ ‘[s]ome risks may be substantial even if they carry a low degree of probability because the magnitude of the harm is potentially great.’ ” (*In re I.J.* (2013) 56 Cal.4th 766, 778.) This is especially true when the case concerns “children of such tender years that the absence of adequate supervision and care poses an inherent risk to their physical health and safety.” (*Rocco M., supra*, 1 Cal.App.4th at p. 824.)

Applying these principles, the court in *J.N.* articulated a non-exhaustive set of factors that juvenile courts should consider in evaluating risk based upon a single episode of endangering conduct: “[A] juvenile court should consider the nature of the conduct and all surrounding circumstances. It should also consider the present circumstances, which might include, among other things, evidence of the parent’s current understanding of and attitude toward the past conduct that endangered a child, or participation in educational programs, or other steps taken, by the parent to address the problematic conduct in the interim, and probationary support and supervision already being provided through the criminal courts that would help a parent avoid a recurrence of such an incident.” (*J.N., supra*, 181 Cal.App.4th at pp. 1025-1026.)

In reviewing the juvenile court’s jurisdictional findings “we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] 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.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

2. *Substantial Evidence Supports the Court’s Finding
that the Parents’ Past Domestic Violence and Ongoing
Refusal to Acknowledge Its Danger Posed a
Significant Risk of Harm to the Child*

Father contends evidence of his past domestic violence against Mother was insufficient to authorize dependency jurisdiction under section 300, subdivision (b). He argues there was no evidence of current risk, because the triggering incident occurred a year before the jurisdictional hearing and there had been no other reported domestic violence incidents during Mother’s pregnancy or after Michael’s birth.

The record demonstrates that the juvenile court took into account the appropriate factors enunciated in *J.N.* for evaluating the risk of harm based on a single incident, and that its finding of current risk to Michael was supported by substantial evidence. The court properly observed that, at the time of the incident, Mother’s two older children were already under juvenile court supervision due to Mother’s failure to protect them from domestic abuse perpetrated by their respective fathers. Notwithstanding the Department’s intervention in that case, Mother had failed to complete court-ordered programs that were aimed at helping her avoid abusive relationships, and Mother’s family reunification services as to those siblings were terminated as a result. Father admitted he knew of Mother’s past troubles with domestic violence, but despite claiming to have warned her of the danger it posed to her children, Father became the third reported domestic partner to abuse Mother.

Moreover, Father's attack on Mother was severe; he reportedly scratched and punched Mother in the face, causing lacerations and bruises. Although both parents claimed they were unaware that Mother was pregnant with Michael at the time, this factor does not diminish the brutality of the incident or establish that it is unlikely to reoccur. (See, e.g., *In re John M.*, *supra*, 217 Cal.App.4th at pp. 418-419 [observing, severity of domestic violence incident occurring one year before jurisdictional finding was not lessened by the fact it was isolated and in the past or that it occurred outside of the child's presence].)

Further, the parents' attempts to conceal and later misrepresent the December 2015 altercation suggested they did not appreciate the danger posed by domestic violence. Their conduct also reinforced the Department's early concerns that the parents were unlikely to take steps to remediate the risk of future incidents without court supervision. Indeed, although Mother eventually enrolled in some of the programs the court ordered in her prior dependency case, Father had taken no action at the time of the hearing to address his violent conduct. Moreover, Mother admitted the parents had regular arguments. Although she maintained Father usually left the home to calm down "before getting to the point of hitting each other," the December 2015 police report proved this was not always the case. Coupled with the parents' apparent refusal to acknowledge the danger posed by the past incident, this evidence plainly supported the court's finding that a current risk of harm to the minor still existed. (See *In re John M.* (2012) 212 Cal.App.4th 1117, 1127 [mother's failure to appreciate danger posed by her past conduct supported finding that child could not safely remain

in her custody]; cf. *J.N.*, *supra*, 181 Cal.App.4th at p. 1026 [where parents were consistently “remorseful, loving, and indicated that they were willing to learn from their mistakes,” there was insufficient evidence to show current risk of harm, notwithstanding father’s past arrest for driving under the influence with children in the car].)

Considering all these circumstances, the court could reasonably conclude that Mother remained stuck in the cycle of domestic violence, and that her current partner, Father, had become part of that cycle. The evidence supports the juvenile court’s finding that a substantial risk remained of future domestic violence between the parents, and that such violence would manifestly endanger their infant child. The court properly assumed jurisdiction over Michael.

3. *The Disposition Order Was Proper*

Father does not challenge the substance of the disposition order. Rather, he argues reversal of the jurisdictional finding necessarily negates the juvenile court’s authority to enter the order in the first instance. Because we affirm the jurisdictional finding, Father’s argument is insufficient to establish reversible error.

DISPOSITION

The jurisdictional finding and disposition order are affirmed.

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STONE, J.*

We concur:

EDMON, P. J.

LAVIN, J.

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