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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

I.E.,

Defendant and Appellant.

B279908

(Los Angeles County
Super. Ct. No. DK13959)

APPEAL from orders of the Superior Court of Los Angeles County, Kristen Byrdsong, Referee. Affirmed.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and David Michael Miller, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Father, I.E., appeals from an order sustaining dependency jurisdiction over his infant daughter, E.E., pursuant to Welfare and Institutions Code¹ section 300, subdivisions (a), (b) and (j), and a disposition order removing her from his physical custody. The court found Father's physical abuse of E.E.'s half-siblings put the infant at substantial risk of suffering serious physical harm.² Father contends there was no substantial evidence to support jurisdiction or the disposition order, because, at the time the court made the orders, he had completed a parenting class and was engaged in individual counseling to address anger management issues. We disagree and affirm.

FACTS AND PROCEDURAL BACKGROUND

Consistent with our standard of review, we state the record in the light most favorable to the juvenile court's findings, indulging all legitimate and reasonable inferences to uphold the challenged rulings. (*In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*); *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1384 ["We review the juvenile court's jurisdiction findings and disposition order for substantial evidence."].)

1. *Detention*

E.E. was born in May 2015. The child first came to the attention of the Los Angeles Department of Children and Family

¹ Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² The juvenile court also found the mental health condition of Mother, S.K., and Father's failure to protect E.E. from Mother's mental health issues put the minor at substantial risk of harm. Mother is not a party to this appeal.

Services (the Department) two days after her birth, when the parents attempted to leave the hospital without securing a car seat for the newborn. When he was confronted by hospital staff, Father became combative, asserting car seats were “too big and too expensive.” He told the staff he “did not care about the laws or regulation,” and demanded that the child be discharged. The hospital contacted law enforcement. The child welfare referral was ultimately closed after the parents purchased a car seat.

On October 20, 2015, the Department received another referral regarding E.E., after Mother and the five-month-old were found on the street and brought to a hospital by the Los Angeles Fire Department in the early morning hours. According to the referral, Mother disclosed that she suffered from postpartum depression, and she did not know what she would do with the infant once she left the hospital. Hospital staff reported that Mother presented with hallucinations and paranoia, and the staff suspected Mother and child were homeless. The staff also indicated Mother failed to provide proper neck support when carrying the infant and was otherwise “careless” when handling the child. After Mother handed the infant to a stranger, yelling, “ ‘here take her, take the baby,’ ” hospital staff restrained and sedated Mother.

Mother’s attending physician reported concerns for the infant’s wellbeing, and opined that Mother was not able to properly care for the child in view of her mental health condition and aggressive behavior. The Department also learned Mother was previously hospitalized in December 2014 for depression.

The Department interviewed Mother at the hospital. She denied past mental health problems, but said she had been

homeless for approximately two or three months and claimed she did not know the infant's father.

On October 23, 2015, the Department filed a dependency petition on E.E.'s behalf, alleging Mother's mental health condition and neglect put the child at risk of suffering serious physical harm. The juvenile court detained E.E. in foster care.

2. *Father's Child Welfare History and the Amended Petition*

Mother identified Father and confirmed they shared a home with E.E.

The Department's investigation found that Father had an open dependency case concerning his two older sons, E.E.'s half-brothers. According to the sustained petition in that matter, Father physically abused his sons by "striking them on the buttocks and legs with a belt, hitting them in the face with his hand, punching them in the stomach area, and stepping on them intentionally." The boys were six and five years old at the time. On November 3, 2015, the juvenile court sustained the petition, ordered Father's visits to be monitored, and ordered Father to complete parenting and anger management programs and to obtain individual counseling as part of his reunification plan.

On March 23, 2016, the Department requested a meeting with Father to discuss his sons' open dependency case. Father was reportedly "hostile during the conversation and refused the meeting stating that the mother was doing what she needed to do to regain custody." On May 3, 2016, at the six-month review hearing, the court terminated Father's visitation with his sons, based on reports that Father consistently yelled and made racist and disparaging remarks throughout his monitored visits.

On April 27, 2016, the Department filed the operative amended petition with respect to E.E., which added an allegation against Father for failing to protect E.E. from mother's mental health issues and also added allegations under section 300, subdivisions (a), (b) and (j) concerning the sustained physical abuse counts against Father in his sons' dependency case.

3. *Progress Reports*

On August 4, 2016, the Department filed a progress report regarding the parents' compliance with recommendations for reunification. The report indicated that Mother had completed an intake appointment for mental health services and was scheduled to meet a therapist. Father had enrolled in parenting and anger management classes and was awaiting individual counseling services. A letter from the parenting and anger management class provider indicated Father had completed nine out of the required 12 classes in each program and that his attendance had been consistent. The letter also said Father had a "pleasant demeanor" and was "respectful during class discussions and interactions." The Department's report noted that both parents visited with the child regularly.

Notwithstanding the parents' enrollment in services, the Department assessed that a substantial risk of harm to E.E. remained. The report emphasized that "father initially refused to comply with the Department's recommendation" to enroll in services, and due to that refusal, "several months passed where the father was not participating in any services." On that basis, the Department recommended E.E. remain suitably placed "so that the Department can continue to monitor the parent[s'] compliance in their respective programs."

On September 29, 2016, the Department filed an updated progress report in advance of the jurisdiction hearing. With respect to Mother, the report referred to a letter from Mother's therapist, who diagnosed Mother with bipolar disorder. The letter set forth Mother's treatment goals and confirmed that she had attended all her sessions. Mother was reportedly "engaged and attentive" during sessions, "adherent with her psychotropic medication," and had "gained insight into her condition."

As for Father, the report stated he had attended three individual counseling sessions. He was "appropriate" and "affectionate[]" during visits and the monitor reported no concerns regarding his visits.

4. *Jurisdiction*

On September 30, 2016, the court held the jurisdictional hearing. The court received the Department's reports into evidence and took judicial notice of the sustained petition, minute orders, and case plan in Father's dependency case involving E.E.'s half-siblings. Mother pled no contest to the count alleging her mental health condition placed E.E. at substantial risk of suffering serious physical harm or illness.

Father testified in opposition to the petition's allegations. He had been in a relationship with Mother for two years. They lived in the same home with E.E. from her birth until she was detained. Father said he regularly left the infant alone with Mother, and Mother left the house "plenty of time[s]" with E.E. With respect to E.E.'s detention, Father testified that "Mother left the house one day with the baby as she always does," and he did not become aware of E.E.'s placement in foster care until "a month later." Father claimed Mother told him the infant was staying with a cousin the whole time.

Father said he was unaware Mother had been hospitalized due to her mental health issues and denied knowing she had hallucination episodes. He claimed to be unaware of her paranoia, and testified that she always acted normal around him. He had no safety concerns regarding Mother's ability to supervise and parent E.E.

Father refused to acknowledge that E.E.'s half-siblings had been removed from his care; he maintained they were removed from their mother's custody—not his. He denied physically disciplining his sons, and claimed to only use "psychology on them." When confronted with the juvenile court's physical abuse findings and the sustained dependency petition, Father again protested that his sons were not removed from his custody.

Father testified that he completed a parenting class and anger management course. He said he learned to communicate with his children "psychologically instead of abusively," and that this entailed making "the child feel responsible for their actions." When asked what he learned from the anger management course, Father explained: "[I]f you bring a child up military style, which is good, but it's not so good. And you can bring a child up physically disciplining them, which is not good at all. But both of these things you can have -- the child can go in the right direction of being responsible and respecting authority."

Father repeatedly denied physically abusing his children. When asked if he addressed physical abuse in his parenting class, he responded: "Well, they addressed an issue towards me but, like again I say, I corrected my children. You're saying physical abuse. I don't physically abuse my children. . . . Now, I do correct my children. If you're saying abusive and all that, this is very wrong I don't abuse my children."

After hearing Father's testimony, the court invited argument from counsel. Father's counsel asked the court to dismiss all counts pertaining to Father's conduct. With respect to Father's physical abuse of E.E.'s half-siblings, counsel maintained the evidence failed to establish a current risk of harm. He stressed there was no evidence that E.E. had ever been abused, and emphasized that Father had since completed parenting and anger management courses to address the issues that led to his sons' dependent status. He also argued Father was unaware of Mother's mental health issues and should not be charged with failing to protect E.E.

The minor's counsel argued Father's physical abuse of E.E.'s half-siblings placed the infant at similar risk of harm. She stressed that Father continued to deny the physical abuse underlying his sons' sustained dependency petition, despite completing parenting and anger management programs, and argued Father's testimony indicated he continued to believe his discipline methods were appropriate.

The Department joined with the minor's counsel regarding the physical abuse allegations. With respect to Mother's mental health and Father's failure to protect, the Department noted that Mother was hospitalized twice during the two-year period that she shared a home with Father, and yet Father claimed to be unaware of these hospitalizations.

The juvenile court sustained the petition under section 300, subdivisions (a), (b) and (j). The court found that Mother's mental health condition and Father's failure to protect E.E. endangered the child, and that Father's physical abuse of E.E.'s half-siblings placed E.E. at substantial risk of suffering serious physical harm. In that regard, the court found Father's

testimony regarding Mother's mental health condition was not credible, and that his refusal to acknowledge his physical abuse of his sons placed E.E. at risk of suffering similar harm.

5. *Disposition*

On November 9, 2016, the court held a contested disposition hearing. In advance of the hearing, the Department filed an updated progress report. The report confirmed Mother had completed a parenting class and was participating in therapy. Father had participated in five therapy sessions; his goals included "maintaining calm during stressful situations" and "using more positive parenting."

Mother and Father joined in requesting that E.E. be returned to parental custody. The minor's counsel, joined by the Department, requested a suitable out of home placement with reunification services for the parents. The minor's counsel acknowledged the parents' participation in services, but argued they had failed to implement the tools offered in the programs. Of most concern, Mother continued to live in the same home as Father, and Father continued to deny he abused or inappropriately disciplined E.E.'s half-siblings.

The juvenile court ordered E.E. removed from the parents' custody. The court was especially "concerned that Mother is still living in the residence with Father." And, while the court "commend[ed] both parents on the progress they've made regarding their services," it stressed that there needed to be "measures in place [to ensure] that the child is protected." Thus, the court ordered the parents to participate in further reunification services to address Mother's mental health condition and Father's use of physical discipline and abuse.

DISCUSSION

1. *Jurisdiction Was Proper Based Upon Father's Physical Abuse of E.E.'s Half-Siblings*

Father contends the evidence was insufficient to support dependency jurisdiction over E.E. under any of the statutory bases alleged in the amended petition. He argues no reasonable inference of risk could be drawn from his past conduct, because he completed services aimed at ameliorating such risks and there was no evidence that he ever abused E.E. We disagree.

“ ‘In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “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].” ’ ’ ’ ’ ” (*I.J.*, *supra*, 56 Cal.4th at p. 773.)

“‘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. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.’” (*I.J.*, *supra*, 56 Cal.4th at p. 773.) Here, because section 300, subdivision (j) most closely describes E.E.’s situation, we focus on that subdivision.³ (See, e.g., *I.J.*, at pp. 773-774.)

³ The Department argues Father is effectively barred from challenging jurisdiction in this case because Mother pled no contest to the allegation concerning her mental health condition. The Department relies upon *In re Troy Z.* (1992) 3 Cal.4th 1170 (*Troy Z.*), wherein our Supreme Court held that the appellant parents’ plea of “no contest” to allegations under section 300 precluded them from challenging the jurisdictional findings on appeal. The *Troy Z.* court explained its reasoning as follows: “A plea of ‘no contest’ to allegations under section 300 at a jurisdiction hearing admits all matters essential to the court’s jurisdiction over the minor. Accordingly, by their knowing and voluntary acquiescence to the allegations of the petition, parents waived their right to challenge on appeal the legal applicability of section 300(e) to their conduct.” (*Troy Z.*, at p. 1181.)

Father argues *Troy Z.* is inapposite because *he* did not plead no contest to the allegation and, therefore, he cannot be held to have knowingly and voluntarily “waived” his right to challenge the sufficiency of the evidence. We need not decide whether the principle announced in *Troy Z.* bars a parent who did not plead no contest from challenging the sufficiency of the evidence to support jurisdiction. Here, because the evidence

“Subdivision (j) applies if (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.” (*I.J., supra*, 56 Cal.4th at p. 774.) Here, the sustained petition in his sons’ dependency case establishes that Father physically abused E.E.’s half-siblings as defined in section 300, subdivision (a). The first requirement for jurisdiction under section 300, subdivision (j) is thus met. It is the second requirement that is at issue. (See *I.J.*, at p. 774.)

“‘[S]ubdivision (j) 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.’” (*I.J., supra*, 56 Cal.4th at p. 774.)

supported the finding under section 300, subdivision (j), jurisdiction was proper, regardless of whether the evidence also supported the finding concerning Mother’s mental health condition. (See *I.J., supra*, 56 Cal.4th at p. 773; cf. *In re Sergio C.* (1999) 70 Cal.App.4th 957, 959–960 [where the mother pled no contest to allegation that she severely abused children, jurisdiction was proper, notwithstanding the father’s appeal regarding the findings against him].)

“Unlike the other subdivisions, subdivision (j) includes a list of factors for the court to consider: ‘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).) ‘The “nature of the abuse or neglect of the sibling” is only one of many factors that the court is to consider in assessing whether the child is at risk of abuse or neglect in the family home. Subdivision (j) thus 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.’” (*I.J., supra*, 56 Cal.4th at p. 774.)

Father contends there was no basis to assume jurisdiction over E.E., notwithstanding his abuse of her half-siblings, because in the year since his sons’ dependency petition was sustained, he had completed parenting and anger management courses and was engaged in individual counseling to address the underlying causes of his abusive conduct. While the juvenile court rightly commended Father for his commitment to these efforts, we agree with the court’s finding that those efforts had yet to ameliorate

the substantial risk that Father would continue to inappropriately discipline his children, including E.E.

Despite participating in programs, Father maintained he never physically disciplined, much less abused, his children. His testimony was plainly contradicted by the sustained petition in his sons' dependency case, which included findings that he physically abused E.E.'s half-siblings by hitting them with a belt, slapping them in the face, punching them in the stomach, and stepping on them intentionally. When asked if the programs addressed the juvenile court's finding that he physically abused his sons, Father responded: "Well, they addressed an issue toward me but, like again I say, I corrected my children. You're saying physical abuse. I don't physically abuse my children. . . . Now, I do correct my children." Father expressed a similar sentiment when asked how he would direct infant E.E.'s behavior, stating: "[T]he child haven't [*sic*] done anything wrong. Where are we going with this? If you're saying if I'm abusing my children, no, I'm not."

In view of Father's testimony, the juvenile court reasonably inferred that Father's participation in programs had yet to impress upon him the danger posed by physically disciplining or abusing his children. (See *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197 ["One cannot correct a problem one fails to acknowledge"].) Moreover, his dismissive attitude towards his prior acts of physical abuse suggested Father was prone to neglect other parental duties, which could create a significant risk of harm to his infant daughter. (See § 300, subd. (j) [enumerating risk of harm under section 300, subd. (b) as a basis for jurisdiction]; see *I.J., supra*, 56 Cal.4th at p. 774 ["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’ ”].) Indeed, Father’s tendency to neglect these duties was evident in his willingness to have Mother act as E.E.’s primary caretaker, notwithstanding the danger her unstable mental health condition posed to the child. And, this was an acute concern with respect to E.E., whose tender years placed her at inherent risk of harm from the absence of adequate parental care. (See *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.)

Under these circumstances, the juvenile court reasonably concluded that Father’s abuse of E.E.’s half-siblings indicated she faced a substantial risk of serious harm. The juvenile court properly assumed jurisdiction over the child pursuant to section 300, subdivision (j).

2. *The Evidence Supports the Disposition Order*

Before a dependent child may be taken from the physical custody of a parent, section 361, subdivision (c)(1) requires the juvenile court to find “clear and convincing evidence” of “a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the [parent’s physical custody].”

In challenging the juvenile court’s disposition order, Father makes essentially the same factual argument he asserted in contesting the jurisdictional finding. Focusing on evidence showing he completed parenting and anger management courses, Father argues his physical abuse of E.E.’s half-siblings did not suggest a risk of harm to the infant. To bolster the argument, Father relies upon the heightened clear and convincing evidence

standard of proof that applies to disposition orders under section 361, subdivision (c). Father maintains that standard requires this court to find the evidence was “so clear as to leave no substantial doubt [and] sufficiently strong to command the unhesitating assent of every reasonable mind” about the risk of harm his continued custody posed to E.E. While Father is correct about the standard governing the juvenile court’s finding, he is mistaken about that standard’s applicability to our review of the order on appeal.

Contrary to Father’s premise, the clear and convincing standard specified in section 361, subdivision (c) is “for the edification and guidance of the trial court and not a standard for appellate review. [Citations.] ‘ “The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal.” [Citations.]’ [Citation.] Thus, on appeal from a judgment required to be based upon clear and convincing evidence, ‘the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent’s evidence, however slight, and disregarding the appellant’s evidence, however strong.’ ” (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880-881; *In re Amos L.* (1981) 124 Cal.App.3d 1031, 1038 [notwithstanding section 361’s heightened proof requirement, “on appeal, the substantial evidence test applies to determine the existence of the clear and convincing standard of proof, the same as in other cases”]). Our task is simply to determine whether there was substantial evidence, contradicted or uncontradicted, upon which the juvenile

court could have reasonably based its removal order. (*I.J., supra*, 56 Cal.4th at p. 773.) We conclude there was.

As explained above, the juvenile court reasonably based its substantial risk finding on a sustained petition in which a court found Father subjected E.E.'s young half-siblings to serious physical abuse. The evidence also demonstrated Father's tendency to neglect parental duties, which resulted in his failure to protect E.E. from the danger posed by Mother's mental health condition. Taken together, Father's denial of the physical abuse finding, his indifferent response to Mother's mental health condition, and the evidence of his propensity to perpetrate violent acts on his children were sufficient to find Father posed a substantial danger to E.E.'s health and safety until his progress in court-ordered programs indicated otherwise. Based on this record, the juvenile court reasonably concluded the underlying causes of Father's misconduct had not been adequately addressed or resolved, and that returning E.E. to Father's custody still posed a substantial danger to her physical and mental wellbeing.

DISPOSITION

The jurisdiction and disposition orders 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.