Filed 7/10/17 In re C.T. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re C.T. et al., Persons Coming Under the Juvenile Court Law.	B277585 (Los Angeles County Super. Ct. No. DK15252)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. P.T., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Victor Greenberg, Judge. Affirmed.

Megan Turkat Schirn, 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, Deputy County Counsel, for Plaintiff and Respondent.

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Father (P.T.) appeals from the juvenile court's jurisdictional order. The standard of review, which is dispositive, requires us to " 'determine if substantial evidence, contradicted or uncontradicted, supports [the jurisdictional finding]. "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]." ' " ' " (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

Father's challenge to the juvenile court's jurisdictional order is not persuasive because he (1) relies on evidence received *after* the jurisdictional hearing; (2) relies on evidence presented for the first time on appeal;[1] and (3) ignores the juvenile court's

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[1] We previously struck the medical articles attached to father's brief, which were not admitted into evidence in the juvenile court.

credibility findings, arguing that a different expert should have been credited. Applying the appropriate standard of review, the jurisdictional order must be affirmed.

BACKGROUND

Mother (B.P.) and father have three children, and in January 2016, they were aged 14 years, 2 years, and 10 weeks.

1. Petition

On January 21, 2016, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition under Welfare and Institutions Code[2] section 300, subdivisions (a), (b), (e), and (j), which, as later sustained, alleged that "two-month old [E.T.] was medically examined and found to be suffering a detrimental and endangering condition consisting of an intracranial hemorrhage, subdural hematoma, and acute respiratory failure following trauma and surgery. The central and peripheral retina in the child's right eye are well visualized and there are retinal whitening and extensive dot blot and flame hemorrhages in all fo[u]r quadrants of both eyes extending from the optic nerve interiorly past the equator. The child's injuries are not consistent with the child's mother [B.P.] and the child's father [P.T.]'s explanation of the manner in which the child sustained the child's injuries. The child's injuries are consistent with non-accidental trauma. Such injuries would not ordinarily occur except as the result of deliberate, unreasonable and neglectful acts by the parents who had care, custody and control of the child. Such deliberate, unreasonable and neglectful acts on the part of the child's parents endangers the child's physical

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[2] Undesignated statutory citations are to the Welfare and Institutions Code.

health, safety and well-being, creates a detrimental home environment and places the child and the child's sibling [two-year-old] [C.T.] at risk of serious physical harm, damage and danger."

2. Incident Underlying the Petition

On January 15, 2016, E.T.'s paternal grandmother was babysitting him while his parents were at work. Grandmother reported that she placed E.T. on a bed and went downstairs. She later found E.T. on the floor, lying on a stack of books, in an unresponsive state.

Grandmother reported that she did not know what happened, but believed that a three-year-old child also in the home may have dropped E.T. Grandmother indicated that the three-year-old had been curious about E.T. and "made attempts to grab and hold the victim all week." (Italics omitted.) Because of this grandmother installed a deadbolt lock, but on the day E.T. was injured, she forgot to lock the door.

Grandmother called 911, and E.T. was taken to the emergency room. E.T. suffered a head injury—more specifically a subdural hemorrhage and severe right retinol hemorrhage—and was in critical condition.

Mother and father visited E.T. in the hospital and were distraught. A social worker reported that mother and father visited daily. The physician who examined E.T. could not rule out that he had been injured while under their care even though he was only subsequently symptomatic.

At a contested jurisdictional hearing, two expert witnesses reached different conclusions. Dr. Sandra Murray—who the juvenile court credited—examined E.T. and opined that his injuries were caused by "abusive head trauma." "A short fall onto

a floor would not be sufficient force[] to cause these types of injuries." She believed the injuries were caused by "[s]ome mechanism that caused the brain to bounce around inside of the head tearing the vessels causing the brain injury." She testified that a three-year-old child could not have caused the injury. Specifically, she testified that a 3-year-old is "not big enough, strong enough or have enough coordination to be able to cause these injuries." Dr. Murray previously reported that she could not precisely determine when E.T.'s injuries occurred and the social worker reported that they could have occurred while in mother and father's custody. When asked, "[I]sn't it true that signs and symptoms of acute subdural hematoma occur immediately as opposed to gradually over a period of time," Dr. Murray responded as follows: "The timing can vary from immediate to over a period of hours."

Dr. Khaled Tawansy—who the juvenile court did not credit—testified (based on a review of medical records) that the subdural hematoma could have been accidental and the retinal bleed could have been caused by the medical intervention to address the hematoma. He concluded the retinal hemorrhages did not indicate "nonaccidental trauma." He opined that the subdural hematoma was caused by "accidental trauma." In contrast to Dr. Murray, he concluded that the subdural hematoma could have been caused by a short fall.

3. Juvenile Court Findings

The juvenile court summarized Dr. Murray's testimony as follows: "[I]n her expert opinion, the injuries to [E.T.] are inflicted non accidental trauma or abuse. There's no medical explanation for the injuries outside of that opinion." The court found "Dr. Murray to be credible and that her opinion is based

upon her extensive experience, consultation with other specialists and physicians, examination of the child, and review of all birth and medical records." The court found that Dr. Tawansy's credibility was undermined because he was unfamiliar with information in E.T.'s medical records.

Ultimately the court concluded that the injuries E.T. suffered "would ordinarily not be sustained except for the results of the unreasonable or neglectful acts or omissions from the parents or other persons who had care and custody" of E.T. The court stated that "[t]he perpetrator is unknown. Although the child was in custody of the parents and grandmother at various times during which the injuries could have occurred." The court sustained the petition.

The juvenile court deferred disposition until mother and father could be evaluated by a psychologist. An appointed psychologist prepared a report prior to the juvenile court's dispositional hearing. After reading the report, the juvenile court concluded that the parents should retain physical custody of the children. Visitation with paternal grandmother was ordered monitored.

The psychologist's report was not introduced prior to the juvenile court's jurisdictional order. In that report, Dr. Nancy Kaser-Boyd concluded that C.T. and E.T. "can be safely returned to their parents at this time." Dr. Kaser-Boyd concluded it was not "likely" that either child would "be abused by either parent, either physically or emotionally." "The relationship that the parents offer appears to be very loving. I found it remarkable that, unlike many parents whose children are out of the home, they have been at the caretaker's home every morning and evening to help care for the children. These are both smart and

competent parents. It seems clear that they have a lot of energy and motivation to make things good for their children. . . . After what has occurred with their newborn, it is my opinion that they will be extra vigilant about safety issues with these two young children."

DISCUSSION

Father challenges the juvenile court's jurisdictional order. Father's first argument is that the "juvenile court lacked substantial evidence to sustain jurisdiction where [E.T.]'s *accidental* injuries were not caused by an act of parental neglect or omission." (Italics added, boldface and capitalization omitted.) Father's premise is incorrect. The trial court expressly found that E.T.'s injuries were *not* accidental. Specifically the court stated: "the court finds that the child has injuries caused by non accidental abusive trauma."

Father's next argument—that "the juvenile court lacked sufficient evidence to find the injuries were inflicted nonaccidentally" (boldface and capitalization omitted)—ignores the standard of review. Dr. Murray testified that E.T.'s injuries were consistent only with nonaccidental trauma. The trial court credited that testimony, and it constituted substantial evidence showing that the injuries were nonaccidental. Father's claim that the juvenile court "displayed a flawed understanding of the medical evidence" is not supported by the record. Moreover, " ' "issues of fact and credibility are the province of the trial court." ' " (*In re I.J., supra*, 56 Cal.4th at p. 773.) Dr. Murray's testimony overwhelmingly supported the juvenile court's conclusion that the harm to E.T. was nonaccidental.

Finally, father argues that there was insufficient evidence to take jurisdictions under sections 300, subdivisions (a) and (b)

because there was an intervening cause that precluded a finding of parental neglect.

Section 355.1, subdivision (a) provides the following presumption: "Where the court finds, based upon competent professional evidence, that an injury, injuries, or detrimental condition sustained by a minor is of a nature as would ordinarily not be sustained except as the result of the unreasonable or neglectful acts or omissions of either parent, the guardian, or other person who has the care or custody of the minor, that finding shall be prima facie evidence that the minor is a person described by subdivision (a), (b), or (d) of Section 300."

The juvenile court applied the presumption, concluding that based on the professional evidence "the injuries and detrimental conditions sustained by the minor is of a nature [that] would . . . . ordinarily not be sustained except for the results of the unreasonable or neglectful acts or omissions from the parents or other persons who had care and custody of the minor." The court further found that the injuries could have occurred while E.T. was in the custody of his parents or his grandmother.

Substantial evidence supported the court's findings. Dr. Murray testified that a hematoma can occur gradually over a period of hours. Thus, E.T. could have been injured before he was taken to his grandmother's home. Dr. Murray further reported to social workers that the timing of E.T.'s injury was unclear. She explained the injury "cannot be isolated to a specific time due to [its] nature . . . ." Dr. Murray could not "rule out where" the injury occurred. Although father presented different evidence, the juvenile court was not required to credit father or his expert.

Moreover, even if the court erred in applying the section 355.1 presumption, the court also took jurisdiction under section 300 subdivision (e).[3] If any ground for jurisdiction is supported by substantial evidence " 'the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.' " (*In re I.J., supra*, 56 Cal.4th at p. 773.) Moreover, throughout his brief father relies heavily on evidence presented *after* the jurisdictional hearing. He fails to show that at the time of the jurisdictional hearing the court erred in concluding mother and father could not be ruled out as perpetrators. To show that reversal is required, father must show more than that the court could have reached a different conclusion. (*In re M.R.* (2017) 8 Cal.App.5th 101, 108 ["[W]e do not consider whether there is evidence from which the

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[3] Section 300, subdivision (e) provides: "The child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, 'severe physical abuse' means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child shall not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse pursuant to Section 332."

juvenile court could have drawn a different conclusion but whether there is substantial evidence to support the conclusion that the court did draw."].) Even if the juvenile court could have dismissed the petition as in *In re Roberto C.* (2012) 209 Cal.App.4th 1241, 1256, father does not show that the court was required to do so.

Although father persuasively shows that his "family . . . suffered [a] personal tragedy and was nothing other than cooperative and appropriate in all of their interactions with the juvenile court and the Department," he cannot show that at the time the court entered its jurisdictional order the order was erroneous. The court was required to consider risk at the time of the jurisdictional hearing. (*In re A.S.* (2011) 202 Cal.App.4th 237, 244 [" 'The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm.' "]; see *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1399 [striking material referring to matter occurring after order challenged on appeal].)

This case is similar to *In re A.S., supra*, 202 Cal.App.4th 237, in which the juvenile court's jurisdictional order was affirmed. When A.S. arrived at the hospital with her grandfather, who had been caring for her, she was limp and nonresponsive. (*Id.* at p. 240.) She suffered from a subdural hematoma and retinal hemorrhages. (*Ibid.*) The parents were not aware of a traumatic event. (*Ibid.*) The court removed A.S. from the family home because there was no explanation for A.S.'s serious injury, and the parents could not be ruled out as perpetrators. (*Id.* at p. 242.) Based on the testimony of a physician that the injuries do not ordinarily occur accidentally, the appellate court found that the evidence supported the finding

that the injuries were intentionally inflicted. (*Id.* at p. 245.) The court rejected the father's appellate argument based on information that was not presented to the juvenile court. (*Ibid.*) Just as in *A.S.,* here father demonstrates no error in the jurisdictional order.[4]

DISPOSITION

The juvenile court's jurisdictional order is affirmed.

SORTINO, J.*

WE CONCUR:

BIGELOW, P. J. GRIMES, J.

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[4] Respondent's motion to dismiss the entire appeal on the ground that it is moot is denied. An order dated February 23, 2017, of which we take judicial notice, indicates that the juvenile court has terminated jurisdiction. Nevertheless, the jurisdictional order challenged on appeal could have consequences in future family law or dependency proceedings. (*In re D.C.* (2011) 195 Cal.App.4th 1010, 1015; *In re Daisy H.* (2011) 192 Cal.App.4th 713, 716; but see *In re N.S.* (2016) 245 Cal.App.4th 53, 60-63.) Additionally, if the jurisdictional order were reversed, the dispositional and all subsequent orders would be moot. (*In re Janet T.* (2001) 93 Cal.App.4th 377, 392.) We consider father's appeal even though jurisdiction as to mother was not challenged. (*In re Christopher M.* (2014) 228 Cal.App.4th 1310, 1316.)

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