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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

B297598

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

(Los Angeles County
Super. Ct.
No. 18CCJP08009A)

Plaintiff and Respondent,

v.

B.B.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Margaret S. Henry, Judge. Affirmed.

Lori N. Siegel, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, Navid Nakhjavani, Principal Deputy
County Counsel, for Plaintiff and Respondent.

B.B., presumed father of infant M.B., appeals from the adjudication order of the juvenile court taking jurisdiction over M.B. He contends that the child's mother is the perpetrator of the domestic violence between the parents and so there is no evidence to support a finding that father is offending. On that basis, father also challenges the disposition order removing M.B. from his custody and awarding him enhancement services. We affirm.

BACKGROUND

I. The petition and detention

M.B. was born in August 2018 when his mother was a dependent of the juvenile court because the maternal grandparents had been unable to protect mother from running away and becoming a commercially sexually exploited child.¹

The Department of Children and Family Services (DCFS) received two referrals in November and December 2018 alleging mother and infant M.B. were missing. The baby had been staying with the paternal grandmother for two weeks. Mother claimed that paternal grandmother refused to return the baby to mother and the police declined to intervene.

In late November 2018, a social worker accompanied by the police retrieved M.B. from the paternal grandmother and returned him to mother. Mother was happy to see M.B. At the

¹ Mother pled no contest to the instant petition and agreed to the proposed case plan. She is not a party to this appeal.

time, mother appeared to be sober and was alone in her apartment, which was clean and organized and devoid of drug paraphernalia and safety hazards. The baby was current in his medical appointments. Mother was already connected to services and her own social worker reported that the only concern about mother was her “ ‘decision making.’ ”

Mother related that she was moving to a new residence because father had stolen the key to her apartment, and she feared he would enter unannounced and without permission. She asked that DCFS keep her residence confidential. In early December 2018, mother texted the social worker that she did not feel comfortable at home because she was being harassed by father who knew where she lived.

The social worker interviewed father in advance of the detention hearing. Father explained he periodically lives in Georgia but had returned to California because of the allegations and to be part of M.B.’s life. Father related several incidents of domestic violence between him and mother in which mother was always the perpetrator. He stated she would scream at and hit him. Once, on July 4, 2018, father took a screen shot of a mark mother left on his face.

In December 2018, DCFS filed a petition under section 300 of the Welfare and Institutions Code.² The juvenile court detained M.B. and granted mother’s request for a temporary restraining order against father. The court ordered father to submit to a paternity test.

² All further statutory references are to the Welfare and Institutions Code.

II. The adjudication and disposition orders

After M.B.'s detention, father flouted repeated court orders to submit to paternity testing. He also refused to be interviewed by DCFS social workers without his attorney present and did not respond to telephone calls from DCFS. He preferred to address the petition's allegations in writing.

Mother was interviewed for the jurisdiction report and described the domestic violence that father perpetrated. She related that early in their relationship, father pulled her hair, slapped, and hit her, leaving bruising, though she did not perceive father's conduct as abuse. Mother's doctor, however, noticed the bruising and talked to mother about the cycle of violence. Mother implored her doctor not to make a report.

Mother described four specific incidents of domestic violence after M.B. was conceived. In December 2017 after discovering mother's pregnancy, father "dropped" mother to the floor in front of her roommates and attacked her, pouring water on her, choking, slapping her, and spitting on her over the course of six hours. On April 1, 2018, when mother was five months pregnant, father hit mother's head against a wall, and pulled her hair and eyelashes out. On July 4, 2018, when mother was eight months pregnant, father ripped out mother's hair and pushed her into the shower. Mother shared with maternal grandmother that in the past, father " 'tried to cover the baby and kill [her].' "

Paternal grandmother confirmed multiple incidents of domestic violence between mother and father, one each in January, May, and July 2018. Both parents were arrested but not charged in the January 2018 incident. Paternal grandmother claimed mother was the aggressor each time.

Maternal grandmother described domestic violence that occurred in January 2018. According to the police report, both parents were arrested in that incident.

In November 2018, after DCFS became involved, mother texted maternal grandmother that father had threatened to kill mother and M.B.

In January 2019, the juvenile court acknowledged the severity of mother's allegations of father's abuse and again ordered father to submit to paternity testing. The court also extended the temporary restraining order and warned father that he was restrained from contacting mother by telephone.

On February 7, 2019, DCFS reported that father was attempting to obtain mother's telephone number from social media and her friends, in violation of the restraining order. Also, paternal grandmother asked mother's sister to persuade mother to drop the restraining order against father. The sister confirmed that paternal grandmother called claiming that mother was not a trustworthy caretaker for M.B. The sister, however, believed that the child was not safe in *father's* custody "due to violence he ha[d] display[ed] in the past."

Father did not appear at the February 2019 jurisdiction hearing and his attorney did not know the reason for father's absence. The juvenile court noted that father was violating its orders as he and paternal grandmother had been trying to violate the restraining order, and father failed to submit to a paternity test. The court expressed its inclination to deny father visitation until he submitted a DNA test; until then, he was simply an alleged father.

The juvenile court observed that the parents' statements were diametrically opposed: based on mother's allegations, M.B.

was being used as a pawn by father and paternal grandmother to find mother. According to father's allegations, mother was inventing everything. The bottom line, the court stated, was that father was violating direct court orders and so the court did not trust him with visits. The court also observed that it was inappropriate for father simply to decline to be interviewed by DCFS and instead to submit a written statement. The court said such a decision "automatically makes me give it less credence than what mother is saying because she's at least being cross-examined by" the dependency investigator.

Father's four-page written statement addressed each of the petition's allegations. He denied that the January and May 2018 incidents occurred. He described mother as the aggressor in July, and on Labor Day, 2018. Father omitted any mention of his own conduct. Father claimed mother's allegations of his violence were untrue and at most, he was trying to restrain her during her attacks on him. Father denied any violent altercation in the presence of M.B., claiming he never threatened to hurt or kill mother. Father did not deny violating the temporary restraining order.

Father finally submitted to paternity testing, which revealed a 99 percent chance he was M.B.'s father. Between December 2018 and February 2019, father had custody of the child almost every weekend from Friday to Monday.

The juvenile court sustained the first amended petition alleging under section 300, subdivisions (a) and (b) that mother and father "have a history of engaging in violent altercations in the presence of the child. On prior occasions, the father has hit the mother, pulled her hair, choked her, and thrown her on the floor." The petition alleges the December 2017 episode and the

incident in January 2018 in which the parents “attacked one another in the mother’s home, resulting in two arrests for domestic violence.” The petition describes “other occasions in 2018” in which father “physically and sexually assaulted the mother while she was pregnant” and after, in the paternal grandparents’ home while the child was present. The petition also alleges that “[o]n prior occasion(s) the father ha[d] threatened to kill the mother. The mother ha[d] obtained a restraining order as a result of the recurrent domestic violence.”

When sustaining the petition, the court stated, “I do find that mother’s statements were *more credible than the father’s*. Particularly because the father wouldn’t discuss them with [DCFS], but rather just wrote out his own statement, which . . . is an easy way out.” (Italics added.)

Turning to the disposition, the juvenile court found there was a “big danger to the child” posed by the extent of domestic violence, particularly when mother was in an advanced stage of pregnancy with M.B. The court removed the child from father’s custody, placed him with mother, and awarded father enhancement services.³ Father appealed.

³ Enhancement services are available at the juvenile court’s discretion. (*In re Destiny D.* (2017) 15 Cal.App.5th 197, 213.) “[E]nhancement services [are] ‘child welfare services offered to the parent not retaining custody, designed to enhance the child’s relationship with that parent.’” (*Ibid.*) They are not employed for purposes of reunification. (*In re A.C.* (2008) 169 Cal.App.4th 636, 642, fn. 5.)

DISCUSSION

I. Justiciability

A child “is a dependent if the actions of either parent bring [the child] within one of the statutory definitions of a dependent.” (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) Thus, the unchallenged findings concerning mother here continue to support dependency jurisdiction under section 300 regardless of the outcome of father’s appeal. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762.) Nonetheless, we will exercise our discretion and reach the merits of an appeal from a jurisdictional finding when, as here, that finding serves as the basis for dispositional orders that are also challenged on appeal. (*Ibid.*)

II. Jurisdiction is supported by substantial evidence

Father contends that the evidence does not support the jurisdiction finding. He argues that mother is “not a reliable source” because she is a bad person and recites mother’s history of mental health issues, substance abuse, suicidal ideation, and institutionalization. Father notes that mother was a sex worker, left the child with a registered sex offender, stayed out late and left the child with unsafe individuals. Acknowledging he and mother have a history of domestic violence, father insists that he “was not the aggressor.” Father overlooks our role in reviewing a finding for substantial evidence.

“In a challenge to the sufficiency of the evidence to support a jurisdictional finding, the issue is whether there is evidence, *contradicted or uncontradicted*, to support the finding. In making that determination, the reviewing court reviews the record in the light most favorable to the challenged order, resolving conflicts in the evidence in favor of that order, and giving the evidence

reasonable inferences. *Weighing evidence, assessing credibility, and resolving conflicts in evidence and in the inferences to be drawn from evidence are the domain of the trial court, not the reviewing court.* Evidence from a single witness, even a party, can be sufficient to support the trial court’s findings.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450–451, italics added.)

The record is replete with evidence that the parents engaged in domestic violence throughout mother’s pregnancy. Although father persists in his defense that he is not the aggressor, the juvenile court was entitled to disbelieve him (see *In re Casey D.* (1999) 70 Cal.App.4th 38, 53) and its “credibility determinations are not subject to reweighing on appeal” (*In re Nadia G.* (2013) 216 Cal.App.4th 1110, 1120). Moreover, mother’s character is irrelevant to the quality of *father’s* conduct or our review of the evidence. The juvenile court expressly believed father did not merely defend himself. Mother stated that when she was newly pregnant, father “dropped” mother to the floor and hit, choked, and slapped her. When mother was five months pregnant, father hit mother’s head against the wall. And, when she was eight months pregnant, father pushed her into the shower. This serious violence between the parents is corroborated by the paternal and maternal grandmothers and by the police.

Jurisdiction under section 300, subdivision (a) “is appropriate when, through exposure to a parent’s domestic violence, a child suffers, or is at substantial risk of suffering, serious physical harm inflicted nonaccidentally by the parent.” (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598–599.) The ongoing, extreme violence between the parents has already put M.B. at substantial risk of harm.

Father cites *In re Giovanni F.*, *supra*, 184 Cal.App.4th 594, to argue that there is no evidence of *intentional* abuse or violence that subjected M.B. to risk of immediate or future harm under section 300, subdivision (a). Yet, the court in *Giovanni F.* stated, “*Domestic violence is nonaccidental.*” (*Id.* at p. 600, italics added.) More important, the severe violence here occurred when mother was pregnant, and so father has already put the baby at direct risk of harm in utero, nonaccidentally.

Nor are we persuaded by father’s argument there is no evidence of future risk of harm to M.B. Father argues he and mother are separated, the restraining order prevents father from contacting mother, and no domestic violence has occurred since it was issued, with the result there is no risk of harm to the baby in the future. But, the juvenile court had evidence that both father and paternal grandmother were attempting to circumvent the restraining order. Substantial evidence supports the order declaring M.B. a dependent under subdivision (a) of section 300 based on father’s conduct.⁴

III. Disposition

A. *Removal*

Father contends that the evidence does not support the order removing M.B. from his custody.

To remove a child from parental custody, the juvenile court must find, by clear and convincing evidence that “[t]here is or

⁴ Given that we affirm the jurisdictional order based on father’s conduct under section 300, subdivision (a), we need not consider whether the order sustaining the petition under section 300, subdivision (b)(1) is supported by the evidence. (See *In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 451.)

would be 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 minor's parent's" physical custody. (§ 361, subd. (c)(1).) We review the removal order for substantial evidence in a light most favorable to the juvenile court's findings. (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 969.)

Here, at the original adjudication hearing on February 8, 2019, the juvenile court found detriment to the child in the allegation that DCFS is investigating, and the fact that father was trying to violate the restraining order. At the March 8, 2019 adjudication hearing, the juvenile court again found "a big danger" to the child posed by the extent of the violence between the parents. The record supports those findings. Father is uncooperative. He disregarded repeated orders to submit to a paternity test. He refused to be interviewed by DCFS and to respond to DCFS telephone calls. He and paternal grandmother continually attempted to violate the court's restraining order. As the court noted, domestic violence has to do with control and father has been trying to control the events in court. All of his conduct puts mother and baby at risk of further violence. "The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.'" (*In re Miguel C.*, *supra*, 198 Cal.App.4th at p. 969.)

Father argues that he had the child incident-free almost every weekend between December 18, 2018 and February 2, 2019, and DCFS presented no new evidence of risk. Yet, as the court observed the new evidence was identified in the amended

petition, filed the night before the adjudication hearing, alleging more facts about father's violence. Also, "denial is a factor often relevant to determining whether persons are likely to modify their behavior in the future without court supervision." (*In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044.) Father refuses to acknowledge his part in the domestic violence, instead claiming mother was the aggressor. After admitting engaging in domestic violence with mother, he refused to talk to the dependency investigator and instead submitted a statement in which he blamed mother for the violence and denied outright that two incidents ever occurred, notwithstanding his own mother had related them to DCFS. Crucially, father has been silent about the allegations he tried to violate the restraining order.

Father also argues that the court necessarily found M.B. was safe in his custody because it deleted M.B. from the restraining order. He adds that the only difference between the detention hearing, when the court declined to include M.B. in the restraining order, and the disposition order, when the court removed the child from father's custody, was his failure to submit to a paternity test. These arguments misrepresent the evidence. At the detention hearing in December 2018, the juvenile court unchecked the box restraining father from contacting M.B. At that point, the parents both had custody of the baby and the amended petition containing new allegations of father's violence had not been filed. At the adjudication hearing in March 2019, the court did not include the child on the restraining order—not because it found that M.B. was *not* at risk in father's care—but expressly so that there would be "no worry about the visits." Nonetheless, the court ordered that father's visits be monitored in a neutral setting and that the paternal family were not to

serve as monitors, signaling its clear conviction that father posed a substantial risk to the child's safety.

For these reasons, we also reject father's contention that in the absence of evidence that he was a danger to M.B., the juvenile court abused its discretion in fashioning his visitation order. The juvenile court has broad discretion in matters concerning child custody and visitation, which discretion we will not disturb on appeal unless the juvenile court exceeded the bounds of reason. (*In re S.H.* (2011) 197 Cal.App.4th 1542, 1557–1558.) We have already concluded that the record supports the court's finding father posed a danger to M.B. We simply cannot say that notwithstanding that danger, the visitation order was an abuse of discretion.

B. *Reasonable alternatives*

Before removing a child from a parent's custody, section 361, subdivision (c)(1) requires that the juvenile court make the finding that "there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's" custody. Father contends that the court erred in failing to make this finding. Any error was harmless. (*In re J.S.* (2011) 196 Cal.App.4th 1069, 1078–1079.) Given M.B.'s delicate age combined with the unresolved history of domestic violence, father's refusal to acknowledge his role in that violence, and his and the paternal grandmother's efforts to circumvent the restraining order, returning the child to

father's custody was not a practical alternative. This baby could not be left alone in father's care unsupervised.⁵

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

LAVIN, Acting P. J.

EGERTON, J.

⁵ As we affirm the jurisdiction order as to father, we need not address his further contention that he should not be required to participate in and complete a domestic counseling course.