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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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

B272081
(Los Angeles County
Super. Ct. No. CK89566)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ANDREW O.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Stephen Marpet, Juvenile Court Referee. Affirmed.

Frank H. Free, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Aileen Wong, Deputy County
Counsel, for Plaintiff and Respondent.

* * * * *

Andrew O. (father) appeals from the juvenile court order asserting jurisdiction over his son A.O. He contends the dependency petition was facially insufficient and that no substantial evidence supported the juvenile court's jurisdictional order. We affirm.

BACKGROUND

Although this appeal concerns only A.O., father had a simultaneous case involving his other son, D.O. D.O. and A.O. have different mothers. The same judicial officer considered jurisdiction over both D.O. and A.O., and we take judicial notice of the case involving D.O., which we summarize briefly.

1. Father's Case Involving His Infant Son D.O. (A.O.'s Half Sibling)

A. The Sustained Petition

The Los Angeles County Department of Children and Family Services (DCFS) filed successive petitions involving D.O.; the final one was sustained. As sustained, the petition alleged that D.O. was born with a positive toxicology for amphetamine and that D.O.'s mother abused controlled substances and had tested positive for controlled substances. In addition to allegations against D.O.'s mother (who is not involved in this appeal), the petition included the following allegations against father: Father and mother had a history of engaging in violent altercations in the presence of the children. In one incident,

father struck D.O.'s mother A.R. repeatedly and then dragged her by her ankles. In another, father brandished a handgun and threatened to kill A.R.

DCFS also alleged that father suffered a prior conviction for battery of a spouse. DCFS further alleged that father had a history of substance abuse and currently abused marijuana. According to the petition, in July 2015, father had a positive toxicology screen for marijuana.

Father denied the allegations.

A.R.'s two older children reported witnessing physical violence between A.R. and father. They described father hitting A.R. with fists and a hanger as well as slapping and pushing A.R. Both children reported that A.R. and father argued frequently.

Father did not consistently submit to court-ordered drug tests and declined to allow DCFS to review his medical records related to his claimed need for medicinal marijuana. Father missed three drug tests in November 2015, two in December 2015 and two in January 2016. Over the same period of time, father had five negative tests, but one was diluted.

B. The Juvenile Court Assumed Jurisdiction over D.O.

The juvenile court assumed jurisdiction over D.O. and ordered father family reunification services. Father was given only monitored visits.

Father's appeal purporting to challenge the juvenile court's jurisdictional order over D.O. was dismissed after his counsel filed a brief identifying no issues.

2. Father's Case Involving His Nine-year-old Son A.O.

The case involving A.O., commenced by way of a separate petition. That petition referred to the same allegations as in the sustained petition involving D.O.

A. The Sustained Petition

When DCFS learned that D.O. had an older sibling, DCFS filed another petition. The October 1, 2015 petition alleged that father and A.R. (D.O.'s mother) have a history of engaging in violent altercations in the presence of A.O.'s sibling D.O. The violence included dragging A.R. by her ankles, brandishing a handgun, and threatening to kill A.R. Father also had a previous conviction for battery of a spouse. The spousal battery involved A.O.'s mother N.R.

DCFS further alleged that father has a history of substance abuse and currently abused marijuana.

B. DCFS Reports

Prior to the jurisdictional hearing, DCFS reported that A.O. lived with his mother N.R. DCFS reported that A.O. previously had been detained from father in 2011. DCFS claimed that the same allegations sustained against father in the case involving D.O. placed A.O. at risk because father had unmonitored visitations with A.O.

N.R. (A.O.'s mother) was aware that father and A.R. argued because A.O. described the arguments. N.R. also reported that there had been domestic violence between her and father and that a restraining order had issued. According to N.R., father hit and choked her in front of A.O. N.R. also reported that father used marijuana but denied observing father under the influence when he picked up A.O. N.R. told a social worker that father owned a gun.

Father denied any domestic violence with either A.R. or N.R., stating that both had fabricated it. Father stated that he did not have overnight visits with A.O. because he did not have

space for A.O. to sleep. Father admitted to smoking marijuana but denied smoking it in A.O.'s presence.

C. The Trial Court Assumed Jurisdiction over A.O.

No witness testified at the jurisdictional hearing involving A.O.

The court assumed jurisdiction and ordered A.O. to remain in the home of his mother N.R. The court then terminated jurisdiction with a custody order awarding joint legal custody to mother and father and sole physical custody to mother. Father's visits were ordered monitored.

DISCUSSION

Father argues (1) the Welfare and Institutions Code section 300¹ petition did not state a cause of action and (2) the petition was not supported by substantial evidence. As we shall explain, his arguments lack merit.

1. Father Forfeited His Claim That the Petition Failed to State a Cause of Action

Father did not challenge the sufficiency of the petition in the juvenile court. He therefore forfeited his argument that the petition failed to state a cause of action. (*In re John M.* (2012) 212 Cal.App.4th 1117, 1123; *In re Christopher C.* (2010) 182 Cal.App.4th 73, 82.) “Allowing parties to challenge the facial sufficiency of a petition for the first time on appeal conflicts with the emphasis on expeditious processing of these cases so that children can achieve permanence and stability without unnecessary delay if reunification efforts fail. [Citation.] Enforcing the forfeiture rule requires parties to raise such issues

¹ All further statutory references are to the Welfare and Institutions Code.

in the juvenile court where they can be promptly remedied without undue prejudice to the interests of any of the parties involved.’ ”² (*In re Christopher C.*, *supra*, at p. 83.)

“In the initial ‘pleading’ stage, the role of the petition is to provide ‘meaningful notice’ that must ‘adequately communicate’ social worker concerns to the parent.” (*In re Jessica C.* (2001) 93 Cal.App.4th 1027, 1037.) But “after a hearing on the merits has been held on the petition, the focus must necessarily be on the substance of the allegations found true by the juvenile court” (*Id.* at pp. 1037-1038.) Father does not contend that the petition gave him inadequate notice of the factual allegations against him. Therefore, if the evidence is sufficient to support the findings, any failure to state a cause of action was harmless error. (*In re Athena P.*, *supra*, 103 Cal.App.4th at p. 627.) Moreover, father was aware of the allegations because they were similar to those involving jurisdiction over D.O., for which father identified no error on appeal. Thus, the only real question is whether substantial evidence supported the petition. (See *In re*

² Father points out that *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1132, considered a challenge to a petition on the ground that it did not state a cause of action even though that issue had not been raised in the juvenile court. We do not find *Nicholas B.* persuasive on that point. *Nicholas B.* relied on *In re Alysha S.* (1996) 51 Cal.App.4th 393, 396-397, which applied rules governing civil cases not juvenile court cases. “ ‘[R]ules applicable to civil cases are not applicable to dependency actions unless expressly made so. ‘Dependency proceedings in the juvenile court are special proceedings governed by their own rules and statutes. [Citations.] Unless otherwise specified, the requirements of the Civil Code and the Code of Civil Procedure do not apply.’ ” (*In re Athena P.* (2002) 103 Cal.App.4th 617, 627.)

John M., *supra*, 212 Cal.App.4th at p. 1123.) We now turn to that question.

2. Substantial Evidence Supported the Juvenile Court’s Jurisdictional Order

Father’s challenge to the juvenile court’s jurisdictional order ignores the appropriate standard of review. “ ‘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].” ’ ’ ’ ’ ” (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

The petition asserted jurisdiction under section 300, subdivision (b).³ “Physical violence between a child’s parents

³ Section 300, subdivision (b)(1) provides for juvenile court jurisdiction when the “child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately

may support the exercise of jurisdiction under section 300, subdivision (b) but only if there is evidence that the violence is ongoing or likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm.” (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717.) Here, father’s pattern of serious violence including conduct in front of A.O. and his half siblings supported the jurisdictional order.

N.R. reported that defendant choked her, causing a restraining order to issue. Further, N.R. reported that A.O. was in her presence when father choked her. Although that incident had occurred years before, father repeated the pattern of serious abuse with his most recent girlfriend A.R. Father threatened to kill A.R. while brandishing a firearm, causing defendant to be arrested. Moreover, A.R.’s older children reported that father was violent in their presence. This evidence—of domestic violence with more than one partner including violence in the presence of children—overwhelmingly supported the need to take jurisdiction over A.O. A.O. easily could wander into a room in which father was engaging in violence, either with A.O.’s mother, with A.R., or with someone else. (See *In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) Further, as respondent argues, father’s

supervise or protect the child from the conduct of the custodian with whom the child has been left The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.”

failure to acknowledge his history of abuse undermines any claim that abuse was unlikely to recur.⁴

DISPOSTION

The juvenile court's jurisdictional order is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.

⁴ Because this ground supported jurisdiction, we need not consider the other grounds sustained by the juvenile court. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.)