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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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

B295614  
(Los Angeles County  
Super. Ct.  
No. 18CCJP05618)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

Y.T.,

Defendant and Appellant.

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

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant and Appellant.

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

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Y.T. (Father) appeals from the jurisdictional findings and dispositional order declaring then four-year-old M.T. a dependent of the juvenile court pursuant to Welfare and Institutions Code<sup>1</sup> section 300, subdivision (b)(1). Father contends there is insufficient evidence to support the juvenile court's finding he committed domestic violence against G.T. (Mother). Father also challenges the dispositional order requiring him to participate in individual and domestic violence counseling.

Mother does not appeal from the jurisdictional findings, and Father does not challenge the jurisdictional findings against Mother. Further, while Father's appeal was pending, the juvenile court granted Mother and Father joint legal and physical custody of M.T. and terminated jurisdiction. Because we cannot grant Father effective relief, his appeal is nonjusticiable and moot. We dismiss the appeal.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *A. The Referral and Investigation*

On July 6, 2018 Father contacted the Los Angeles County Department of Children and Family Services (Department), alleging his son M.T. had been sexually abused by Mother's male roommate, Konstantin Mololkin, when Mololkin and his wife

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code.

babysat M.T. Father stated he and Mother had been separated since December 2017 and were in the middle of divorce proceedings. M.T. told Father that Mololkin had touched M.T.'s penis and anus and urinated on him. Further, Mololkin made M.T. touch Mololkin's penis and anus. The Department detained M.T. from Mother and placed him with Father.

During the Department's investigation,<sup>2</sup> the paternal grandmother reported Mother had scratched her on the face in the presence of M.T. and Father. Father was upset about Mother's behavior, and Father and the paternal grandmother moved out of the home. When the social worker interviewed Mother, Mother denied scratching the paternal grandmother and claimed instead the paternal grandmother pulled Mother's hair in front of M.T. while Mother and Father were having an argument about the family's finances. During the interview, Mother disclosed that in approximately November 2017 Father grabbed her arm and left a bruise during an argument in M.T.'s presence. Mother also reported that on July 26, 2018, during a doctor's visit for M.T., Mother and M.T. left the examination room because M.T.'s doctor wanted to discuss the sexual abuse allegations privately with Father. As Mother and M.T. were walking down the hallway, Father followed them, then grabbed Mother by the arm and neck. M.T. started crying. Father denied he had grabbed Mother by the throat but admitted he had struggled with her because he was concerned she would flee with M.T.

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<sup>2</sup> Mother, Father, and paternal grandmother were interviewed using a certified Russian-speaking interpreter.

B. *The Petition*

On September 4, 2018 the Department filed a petition alleging M.T. came within the jurisdiction of the juvenile court under section 300, subdivisions (a), (b)(1), and (d). The petition alleged Mother and Father had a history of engaging in violent altercations in the presence of M.T. The petition also alleged Mother failed to protect M.T. and created a detrimental and endangering home environment that placed M.T. at a substantial risk of harm by allowing Mololkin, who sexually abused M.T., to reside in the home.

C. *The Jurisdictional and Dispositional Hearings*

On January 30, 2019 Mother pleaded no contest to amended count b-1 of the petition.<sup>3</sup> Amended count b-1 alleged Mother created a detrimental and endangering home environment for M.T. in that Mother used poor judgment and allowed Mololkin, whom she did not know, to reside in the home and have unlimited, unmonitored access to M.T. As a result, Mololkin inappropriately touched M.T. Mother should have reasonably known about the abuse and failed to protect M.T. The Department also amended count b-2 to allege, “[Mother and Father] have an unresolved history of engaging in physical disputes in the presence of the child. On at least one occasion the mother has had marks and bruises as a result of the physical disputes. On or about 11/30/18, there was a physical confrontation between [Mother] and the paternal grandmother.”

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<sup>3</sup> Although Mother signed a waiver form as to counts b-1 and b-2, the juvenile court accepted the plea as to count b-1, heard trial testimony as to count b-2, and sustained the b-2 allegation as to Mother at the end of the trial.

On December 12, 2018 and January 30 and February 6, 2019 the juvenile court heard testimony from Mother, Father, and paternal grandmother as to amended count b-2. Mother testified Father grabbed her upper arms during an argument in November 2017, leaving marks on her. Mother also testified that at the doctor's appointment in July 2018 Father grabbed her between her neck and shoulder and by her left hand. Father denied ever hitting, grabbing, or restraining Mother. The social worker's report as to the July 2018 incident that Father said there was a struggle was "[n]ot quite" correct in that "Mother was covering the child with her body but there was no struggle."

On February 6, 2019 the juvenile court sustained the domestic violence allegations in amended count b-2 as to Mother and Father.<sup>4</sup> The court stated in sustaining the allegations as to Father that M.T. "clearly indicates that Father grabbed mom's wrist and stopped" her at the doctor's office. The court also considered the Father's actions in controlling Mother as supporting the domestic violence allegation against Father.

The juvenile court declared M.T. a dependent of the court under section 300, subdivision (b)(1). The court placed M.T. in the homes of both Mother and Father, with primary physical custody to Father and unmonitored day and overnight visits for Mother. The court ordered Mother and Father to work out an agreement for joint custody, with input from the social worker. The court ordered Mother and Father to participate in individual counseling to address case issues including family history and dysfunction, domestic violence, child protection, co-parenting, and

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<sup>4</sup> The juvenile court dismissed count d and amended count b-2 to allege Mother's physical confrontation with the paternal grandmother was in 2017 instead of 2018.

sex abuse awareness. The court also ordered Mother and Father to attend a 26-week domestic violence program with the caveat that because Mother and Father only spoke Russian, if there were no programs in Russian, they could meet this requirement through counseling with a therapist with experience in sex abuse and domestic violence.

On February 7, 2019 Father appealed from the jurisdictional findings and dispositional order.

*D. The Juvenile Court's Termination of Jurisdiction*

On September 12, 2019 the juvenile court granted Mother and Father joint legal and physical custody and terminated jurisdiction.<sup>5</sup> The juvenile custody order incorporated a mediation agreement signed by Mother and Father, setting forth their joint legal and physical custody arrangement.<sup>6</sup> It did not require Father to participate in additional counseling.

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<sup>5</sup> On our own motion we take judicial notice of the September 12, 2019 minute order and juvenile custody order. (Cal. Rules of Court, rule 8.155(a)(1)(A).) Consideration of postjudgment evidence is appropriate when the later orders are relevant to a motion to dismiss an appeal or to determine whether the evidence renders the appeal moot. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 676 [“appellate courts routinely consider limited postjudgment evidence” for motions to dismiss]; *In re N.S.* (2016) 245 Cal.App.4th 53, 58 [appellate court may consider postappeal rulings that affect its ability to grant effective relief].)

<sup>6</sup> On September 17, 2019 we invited Father and the Department to address whether the appeal should be dismissed as moot. Father and the Department filed supplemental briefs.

## DISCUSSION

“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.” (*In re I.J.* (2013) 56 Cal.4th 766, 773; accord, *In re M.R.* (2017) 7 Cal.App.5th 886, 896 [“[a]s long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate”]; *In re Briana V.* (2015) 236 Cal.App.4th 297, 309 [“[W]e need not address jurisdictional findings involving one parent where there are unchallenged findings involving the other parent.”].) An appeal is not justiciable where “no effective relief could be granted . . . , as jurisdiction would be established regardless of the appellate court’s conclusions with respect to any such [challenged] jurisdictional grounds.” (*In re Madison S.* (2017) 15 Cal.App.5th 308, 329; accord, *In re I.A.* (2011) 201 Cal.App.4th 1484, 1490 [“An important requirement for justiciability is the availability of ‘effective’ relief—that is, the prospect of a remedy that can have a practical, tangible impact on the parties’ conduct or legal status.”].)

Nevertheless, “[c]ourts may exercise their ‘discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future

dependency proceedings [citations]; or (3) “could have other consequences for [the appellant], beyond jurisdiction” [citation].” (*In re D.P.* (2015) 237 Cal.App.4th 911, 917, quoting *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763; accord, *In re Madison S.*, *supra*, 15 Cal.App.5th at p. 329; *In re J.C.* (2014) 233 Cal.App.4th 1, 4.)

Father contends we should exercise our discretion to consider the domestic violence finding against him because he is aggrieved by being deemed an “offending parent,” which could have implications in a future dependency or family court proceeding.<sup>7</sup> But Mother’s allegation Father grabbed her can be considered in a future dependency court proceeding, regardless of the juvenile court’s jurisdictional finding in this case, and any future custody order would need to be based on conditions existing at that time. (See *In re Madison S.*, *supra*, 15 Cal.App.5th at p. 330 “[T]he substance of the spanking allegation would almost certainly be available in any future dependency or family court proceeding, regardless of any determination on our part as to whether it formed an independent basis for juvenile court jurisdiction.”); *In re I.A.*, *supra*, 201 Cal.App.4th at pp. 1494-1495 [“Father . . . fails to suggest any way in which this [jurisdictional] finding actually could affect a future dependency or family law proceeding, and we fail to find one on our own. In any future dependency

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<sup>7</sup> Father also argued in his reply brief he is aggrieved by the requirement in the dispositional order that he participate in time-consuming and expensive counseling. However, as discussed, since the filing of Father’s reply brief, the juvenile court has terminated jurisdiction.



proceeding, a finding of jurisdiction must be based on current conditions.”].)

Because the juvenile court granted Father joint legal and physical custody of M.T. and did not order any future counseling, Father’s appeal likewise has been rendered moot. We have a duty to decide actual controversies and not to give opinions upon moot questions. (*Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541; *In re David B.* (2017) 12 Cal.App.5th 633, 644.) A dependency appeal ““becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief.”” (*In re J.P.* (2017) 14 Cal.App.5th 616, 623; accord, *In re David B.*, at p. 644 [appeal moot where minor was over 18 at time of appeal]; *In re N.S.* (2016) 245 Cal.App.4th 53, 61 [mother’s appeal moot where juvenile court awarded her custody of minor and dismissed dependency proceedings].)

Termination of jurisdiction will not render an appeal moot where an erroneous jurisdictional finding results in an order that continues to affect the parent adversely. (See *In re J.P.*, *supra*, 14 Cal.App.5th at p. 623 [father’s appeal not moot where he lost legal and physical custody of his children with only monitored visitation]; *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547-1548 [father’s appeal not rendered moot by termination of jurisdiction where juvenile court awarded sole physical and legal custody to mother and restricted father’s visitation].)

The procedural posture here is similar to *In re N.S.*, in which the court concluded the mother’s appeal was moot because she was awarded custody of her child and “the jurisdictional findings [were] not the basis of any current order that [was] adverse to her.” (*In re N.S.*, *supra*, 245 Cal.App.4th at p. 61; see

*In re I.A., supra*, 201 Cal.App.4th at pp. 1494-1495 [court could not grant effective relief where father did not challenge final custody order granting him visitation].)

Because Father has not shown any prejudice from the jurisdictional finding or dispositional order for which we can grant effective relief, we dismiss his appeal.

### **DISPOSITION**

The appeal is dismissed.

FEUER, J.

WE CONCUR:

ZELON, Acting P. J.

SEGAL, J.