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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

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

B277779

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Los Angeles County
Super. Ct. No. DK16148

Plaintiff and Respondent,

v.

JOSHUA A.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Rudolph A. Diaz, Judge. Affirmed as
modified.

Mitchell Keiter, 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.

INTRODUCTION

Joshua A., the father of minor J.A., appeals from the juvenile court's dispositional order removing J.A. from the custody of his parents. The court sustained four jurisdictional findings under Welfare and Institutions Code¹ section 300: three against Joshua—physical abuse under subdivision (a); substance abuse under subdivision (b); and verbal abuse under subdivision (b)—and one against Alice B. (mother)² under subdivision (b), for leaving J.A. in Joshua's custody despite knowing about Joshua's issues with alcohol abuse and domestic violence.

On appeal, Joshua challenges the court's jurisdictional finding that he verbally abused J.A.; he does not challenge the other jurisdictional findings. Joshua also challenges his court-ordered case plan requiring him to complete a "full drug program," arguing the evidence at the jurisdictional and dispositional hearings established only that he has issues with alcohol abuse. Because Joshua does not contest three of the court's four jurisdictional findings, we decline to reach the merits of his challenge to the verbal abuse finding. We modify Joshua's case plan and the court's dispositional order to reflect the court's oral pronouncement allowing Joshua to participate in an alcohol-only program, if such a program is available. In all other respects we affirm.

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

² Mother is not a party to this appeal.

FACTUAL AND PROCEDURAL SUMMARY

1. The initiation of J.A.'s dependency proceedings

In February 2016, the Los Angeles County Department of Children and Family Services (Department) received a referral alleging Joshua had physically and verbally abused then-nine-year-old J.A. and that Joshua was frequently under the influence of alcohol while the child was in his care. The caller reported, “father is excessively violent toward his son, using his fists to punch [J.A.] and grabbing [J.A.] violently by his clothing, pushing the child up against the wall, and yelling all manner of derogatory and demeaning terms at [J.A.]. . . . [F]ather will constantly bully [J.A.] to do things for him yelling at him ‘nigger get me (this or that).’ . . . [F]ather borrows cars from friends . . . and will drive with his son with him in the car while under the influence.” On March 17, 2016, the Department removed J.A. from Joshua’s custody and placed the child with his paternal aunt.

On March 22, 2016, the Department filed a dependency petition on behalf of J.A., which, as amended, alleged the following:

A-1 (physical abuse): “On numerous prior occasions, [Joshua] physically abused [J.A.] by striking the child’s body with [Joshua’s] closed fist. Such physical abuse was excessive and caused the child[] unreasonable pain and suffering. . . . Further, [Joshua] has a criminal history of arrests for violent crimes that includes domestic violence, assault with a deadly weapon, and willful cruelty to a child. Such physical abuse of [J.A.] by [Joshua] endangers [J.A.’s] physical and emotional health, safety and well-being, creates a detrimental home environment and

places [J.A.] at risk of physical and emotional harm, damage, danger and physical abuse.”

B-1 (substance abuse): “[Joshua] has a history of substance abuse and is a current abuser of alcohol, which renders [Joshua] incapable of providing regular care of the child. On 03/04/2016, [Joshua] had a positive toxicology screen for alcohol. On 03/04/2016 and on numerous prior occasions in 2016, [Joshua] was under the influence of alcohol while [J.A.] was in [Joshua’s] care and supervision. [Joshua] has a criminal history of a conviction for Driving Under the Influence Alcohol Drugs. [Joshua’s] substance abuse endangers [J.A.’s] physical health and safety and places the child at risk of serious physical harm, damage and danger.”

B-2 (failure to protect): “[Mother] failed to ensure the safety of [J.A.] as she left the child with [Joshua], whom she knew to have an alcohol problem and violent history. Mother left [Joshua] due to being a victim of ongoing domestic violence by [Joshua] between 2005 – 2010. Mother’s failure to protect endangers [J.A.’s] physical and emotional health, safety and well-being, creates a detrimental home environment and places the child at risk of physical and emotional harm, damage, danger and physical abuse.”

B-3 (verbal abuse): “[Joshua] created a detrimental home environment for [J.A.] due to calling the child nigger and telling him on a regular basis that nobody loves him. Such verbal abuse of the child by [Joshua] endangers the child’s physical and emotional health, safety and well-being, creates a detrimental

home environment and places the child at risk of physical and emotional harm, damage, and danger.”³

We summarize the evidence supporting each sustained allegation below.

1.1. The physical abuse and domestic violence allegations (A-1, B-2)

Mother reported that Joshua has a history of domestic violence. Before J.A. was born, Joshua physically abused mother. Although he stopped hitting her while she was pregnant with J.A., Joshua started to abuse mother again several weeks after J.A. was born in 2006. Mother left Joshua and J.A. in 2010; Joshua was awarded legal custody of J.A. when the child was three years old.

A social worker who interviewed J.A. after the Department received the referral reporting Joshua’s abuse observed that the child had a scar on his wrist, a bruise on his knee, and a mark on his back. J.A. initially denied that the injuries were caused by Joshua, and he became defensive when asked questions about his father. However, he later told the social worker that Joshua sometimes hit him. He claimed that Joshua would hit him “ ‘like a grown man with his fist’ ” when J.A. got into trouble. According to J.A., Joshua would hit him “ ‘[a]ll over [his] body. Everywhere.’ ”

J.A.’s paternal grandmother and paternal aunt confirmed that Joshua physically abuses J.A. According to the paternal grandmother, Joshua began hitting J.A. around 2012. The

³ The Department also alleged mother had an unresolved history of abusing methamphetamine (B-4 allegation). The court ultimately dismissed that allegation.

paternal aunt reported that she was concerned about J.A.'s safety because Joshua has a "very short temper," and she knew he had hit J.A. in the past. A few months before the Department filed the original petition, the aunt had seen J.A. with a black eye, which J.A. told her was caused by Joshua "accidentally" striking him in the face. According to the paternal aunt, J.A. was afraid to report Joshua's abuse because he believed Joshua would "retaliate" against him.

1.2. The substance abuse allegation (B-1)

The paternal grandmother reported that Joshua began drinking when he was about 13 or 14 years old. Both the paternal grandmother and the paternal aunt told the Department that Joshua drinks alcohol on a daily basis. According to the paternal grandmother, Joshua is "always drinking" and always has a backpack with alcohol in it. Joshua frequently drinks when J.A. is in his care, and he often fails to wake up in the morning to take J.A. to school because he is "still drunk or hung over." Although Joshua denied using drugs, the paternal aunt told the Department's social worker that Joshua has a past history of using drugs.

The social worker also interviewed J.A. about Joshua's drinking. J.A. reported that he frequently sees Joshua drinking "Old English," and that Joshua has driven drunk while J.A. was in the car " 'lots of times.' " J.A. described Joshua's drunk driving as " 'scary' " and " 'too fast.' "

In March 2016, Joshua tested positive for alcohol. During the Department's investigation, Joshua did not deny that he frequently drinks, but he refused to enroll in a program to address his issues with alcohol. When the social worker asked Joshua if he would voluntarily participate in an alcohol-related

program, Joshua responded, “ ‘Do I look crazy? I don’t need to go to counseling.’ ” When the social worker gave Joshua a list of alcohol-related classes, Joshua stated that he was a “grown man” and allowed to drink, and that his drinking was not affecting J.A.’s safety.

1.3. The verbal abuse allegation (B-3)

The paternal grandmother reported that Joshua often makes derogatory remarks to J.A., sometimes calling the child “nigga.” Joshua has also told J.A. that Joshua is “better” than the child. Joshua sometimes encourages J.A. to fight other children for “fun” and has made J.A. steal items when they go to the store. The paternal aunt told the Department that she believes Joshua emotionally abuses J.A. and that J.A. is afraid of his father. She reported that she once heard Joshua tell J.A. that “ ‘nobody cares about him and that everyone is out to get him.’ ” It is unclear from the record, however, whether Joshua was referring to himself or to J.A.

2. The jurisdictional and dispositional hearing

The court conducted a jurisdictional and dispositional hearing over two days in July and August 2016. The court sustained the A-1, B-1, and B-3 allegations against father and the B-2 allegation against mother, and dismissed the B-4 allegation against mother.

Before the court issued its dispositional order, Joshua objected to the Department’s proposed case plan. He focused on the portion of the case plan requiring him to participate in a drug and alcohol program with aftercare, arguing there was no evidence that he had issues with drug abuse. The Department agreed that Joshua only has issues with alcohol abuse but argued that the court should nevertheless require Joshua to participate

in a combined drug and alcohol problem because he has issues with “substance” abuse. The court responded that it believed Joshua’s issues with alcohol abuse warranted his participation in a drug and alcohol program because, to the court, “It’s all drugs.” However, the court told Joshua that it would allow him to participate in an alcohol-only program if he could find one that provided addiction-related counseling and treatment.

The court then ordered J.A. removed from his parents’ custody and awarded Joshua and mother monitored visitation. As to Joshua, the court entered the following case plan: “Father will participate in a full drug program with emphasis on alcohol and submit to random or on demand drug and alcohol testing . . . on a weekly basis and participate in a 12-step program. [¶] Father will also participate in conjoint counseling . . . as deemed appropriate by the child’s individual counselor and father is advised that a missed or diluted test or positive test for marijuana is deemed a dirty test. [¶] Father will participate in . . . [a] 52-week probation approved parenting class. Father will participate in individual counseling to address all underlying issues contributing to father’s unresolved history of alcohol abuse since the age of 14 and father’s physical and emotional abuse of the child despite father’s prior participation in a domestic violence program and [due to] the detrimental impact upon the child as a result of father directing the child to steal and telling the child that he is unloved and father’s intimidation of the child to not disclose abuse and neglect.”

Joshua filed a timely appeal.

DISCUSSION

1. **Father's challenge to the verbal abuse finding is not justiciable.**

The juvenile court sustained four jurisdictional findings in this case: three against father—physical abuse (§ 300, subd. (a)), substance abuse (§ 300, subd. (b)), and verbal abuse (§ 300, subd. (b))—and one against mother for failing to protect J.A.'s safety by leaving the child in father's custody (§ 300, subd. (b)). Father challenges only the verbal abuse finding; he does not challenge any of the other jurisdictional findings against him or mother.

"It is a fundamental principle of appellate practice that an appeal will not be entertained unless it presents a justiciable issue." (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1489 (*I.A.*)). Generally, for an appeal to raise a "justiciable issue," the reviewing court must be able to provide the appellant effective relief—"that is, the prospect of a remedy that can have a practical, tangible impact on the parties' conduct or legal status." (*Id.* at p. 1490.)

In the context of an appeal challenging a juvenile court's jurisdictional findings, a reviewing court generally cannot provide the appealing parent effective relief where that parent challenges only some, but not all, of the jurisdictional findings. (See *I.A.*, *supra*, 201 Cal.App.4th at pp. 1489–1495.) That is because a single jurisdictional finding against only one parent is sufficient to maintain dependency jurisdiction over a child. (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) Thus, a juvenile court will maintain jurisdiction over the child as long as the court has sustained at least one valid jurisdictional finding against either parent, even if only one parent is offending or if a different jurisdictional finding against the appealing parent is invalid.

(See *I.A.*, *supra*, 201 Cal.App.4th at p. 1491.) For this reason, a reviewing court may decline to address a parent’s challenge to a jurisdictional finding if at least one other finding has been found to be supported by the evidence or if the parent does not challenge all of the other findings establishing jurisdiction over the child. (See *In re Briana V.* (2015) 236 Cal.App.4th 297, 310–311 (*Briana V.*).)

Although Joshua acknowledges that the juvenile court will maintain jurisdiction regardless of the outcome of his challenge to the verbal abuse finding, Joshua urges us to consider his claim, citing several cases where reviewing courts addressed the merits of challenges to jurisdictional findings despite the existence of other valid findings that supported jurisdiction. (See e.g., *In re Drake M.* (2012) 211 Cal.App.4th 754 (*Drake M.*); *In re D.C.* (2011) 195 Cal.App.4th 1010; *In re J.O.* (2009) 178 Cal.App.4th 139; *In re Alexis E.* (2009) 171 Cal.App.4th 438.) None of these cases compel us to reach the merits of Joshua’s claim. Three of the cases—*In re D.C.*, *In re J.O.*, and *In re Alexis E.*—provided no detailed analysis or discussion addressing why the courts reached the merits of the challenged findings. (See *In re D.C.*, *supra*, 195 Cal.App.4th at p. 1015 [acknowledging the mother could be prejudiced by challenged finding without identifying any specific potential adverse consequences]; *In re J.O.*, *supra*, 178 Cal.App.4th at pp. 151–154 [no discussion of issue of justiciability]; *In re Alexis E.*, *supra*, 171 Cal.App.4th at pp. 451–453 [citing the general rule that reviewing courts will not reach the merits of a non-justiciable issue, but providing no explanation for why the court reached the merits of the father’s claim].)

In *Drake M.*, this Division recognized an exception to the general rule that appellate courts will not address the merits of challenges to jurisdictional findings that would not affect the child's status as a dependent of the court. (*Drake M., supra*, 211 Cal.App.4th at pp. 762–763.) Specifically, we held that an appellate court may address some jurisdictional findings against one parent, even though other jurisdictional findings are not disputed, where that parent can identify a specific adverse consequence that may stem from the challenged finding. (*Ibid.*)

The juvenile court in *Drake M.* sustained several jurisdictional findings against the mother, but only a single finding against the father stemming from his use of medical marijuana. (*Drake M., supra*, 211 Cal.App.4th at pp. 761–762.) On appeal, the father challenged only the finding against him; he did not challenge any of the findings against the mother. (*Id.* at p. 762.) We exercised our discretion to address the father's claim because a favorable decision would have rendered the father a “non-offending” parent, a change in the father's status that could have had “far reaching implications with respect to future dependency proceedings in [the underlying] case and [the father's] parental rights.” (*Id.* at p. 763; see also *In re Christopher M.* (2014) 228 Cal.App.4th 1310, 1316–1317 [reaching the merits of the father's challenge to the jurisdictional findings against him, even though the findings against the mother were not disputed, because the challenged findings against the father could have had adverse consequences for placement of the child with the father under section 361.2, subdivision (g)].)

The case at hand is distinguishable from *Drake M.* Unlike the father in *Drake M.*, Joshua will remain an offending parent

regardless of whether we reverse the court's finding that he verbally abused J.A., since Joshua does not challenge the court's findings that he has physically abused J.A. and has issues with alcohol abuse that endanger J.A.

We also reject Joshua's claim that he could suffer adverse consequences if the verbal abuse finding is left unchallenged because part of his case plan requires him to participate in counseling to address the way he speaks to J.A. Even without the verbal abuse finding, the court acted within its discretion by requiring Joshua to participate in counseling to address the manner in which he speaks to J.A. (See *Briana V.*, *supra*, 236 Cal.App.4th at p. 311.) Specifically, "the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child." (§ 362.) Accordingly, a court may fashion a dispositional order that seeks to address issues that are not described in the sustained petition, so long as there is evidence that those issues may impede the parent's ability to reunify with the child if left unaddressed. (See *Briana V.*, *supra*, 236 Cal.App.4th at p. 311.)

As we noted in our factual summary, Joshua frequently uses inappropriate and demeaning language when he speaks to J.A. Joshua's problems with the way he speaks to and interacts with J.A. have had a tangible and negative effect on J.A.'s development, evidenced by J.A.'s fear of Joshua and J.A.'s initial reluctance to disclose that Joshua was abusing him. Thus, resolving those problems is critical to the family's prospects of reunifying and to improving J.A.'s development. This is especially true because Joshua has been the primary parental figure in J.A.'s life since the child was at least three years old.

In sum, we decline to reach the merits of Joshua's challenge to the court's verbal abuse finding under section 300, subdivision (b), because Joshua does not challenge any of the court's other jurisdictional findings, and he has not demonstrated how a favorable ruling on that claim will provide him any meaningful relief.

2. The court's dispositional order and Joshua's case plan are modified to reflect an emphasis on treatment for alcohol abuse.

Joshua next contends the court erred when it ordered him to participate in a full drug program with aftercare and to submit to on demand or random drug testing. He argues there was no evidence that he has issues with drug use, and that the drug-related requirements in his case plan will complicate his ability to reunify with J.A. Joshua's contention has merit.

As noted, a court has broad discretion when fashioning dispositional orders that will best serve and protect the child's interests. (*Briana V.*, *supra*, 236 Cal.App.4th at p. 311.) The court's dispositional orders, however, must be based on the evidence in the record. (*Ibid.*)

Here, there is no evidence that, at the time of the dispositional hearing, Joshua had an issue with any substances other than alcohol. Although the paternal aunt told the Department that Joshua used drugs in the past, there is no evidence as to what type of drugs Joshua used, how frequently he used drugs, if he had used any substance other than alcohol when he was around J.A., or if his use of a substance other than alcohol affected his ability to properly care for J.A. Indeed, at the dispositional hearing, the Department agreed with Joshua that the only evidence of substance abuse was Joshua's habitual

consumption of alcohol. While the court told Joshua that he could participate in a suitable alcohol-only program, the court's minute order and Joshua's case plan do not reflect the court's oral pronouncement.

Although the court stated that Joshua could participate in a program that addresses only alcohol abuse, the court and the parties were uncertain about whether a suitable treatment program exists that focuses only on alcohol addiction and abuse, and that does not also include a drug program. To address the court's oral pronouncement at the dispositional hearing, and in light of the uncertainty as to whether Joshua will be able to find a suitable alcohol-only treatment program, we modify Joshua's case plan and the August 23, 2016 minute order to provide that Joshua must participate in a full alcohol treatment program with aftercare, including random or on demand alcohol testing, on the condition that such a program exists. If, however, Joshua cannot find such a program, then he shall enroll in a full drug and alcohol treatment program with aftercare that will address his issues with alcohol addiction and abuse, including testing, as required by that program.

DISPOSITION

The August 23, 2016 dispositional order and Joshua's case plan are modified as reflected in this opinion. The jurisdictional findings and the modified dispositional order are affirmed.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

ALDRICH, J.