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

In re A.W., et al., Persons Coming  
Under the Juvenile Court Law.

B279259

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

(Los Angeles County  
Super. Ct. Nos. DK15470,  
DK15731, DK15722)

Plaintiff and Respondent,

v.

ANTHONY W.,

Defendant and Appellant.

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

Cristina Gabrielidis, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,  
Assistant County Counsel and Peter Ferrera, Principal Deputy  
County Counsel for Plaintiff and Respondent.

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Father Anthony W., Sr. (father) challenges the juvenile court's exercise of jurisdiction over his seven children. We conclude that the record contains substantial evidence that father inflicted serious physical harm on several of his children, and thus we affirm the jurisdictional orders.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Father has four children with Regina G.: Anthony W., Jr. (born in 2002), Xavier W. (born in 2004), Josiah W. (born in 2005), and Jacob W. (born in 2007). Father has two children with Susan C.: Cesili C.-W. (born in 2002) and Tony R.-W. (T.J.) (born in 2004). He has one child with Sarah K.: Benjamin W. (born in 2014).

Prior to the initiation of these proceedings, father and Regina shared jointed legal and physical custody of Anthony, Xavier, Josiah, and Jacob. Father had full custody of Cesili and T.J. Benjamin lived with his mother.

#### *A. January 2016 Child Abuse Report*

On January 14, 2016, the Los Angeles County Department of Children and Family Services (DCFS) received a report that father had physically abused Anthony and Xavier. A children's social worker (CSW) interviewed the children at school the next day.

Xavier said that the prior morning, father had been angry that Xavier was not dressed for school. Father carried Xavier into the bathroom, pushed him down on the ground, causing Xavier to hit his shoulder, and then hit him several times. Father then told Xavier to get dressed for school. When Xavier could not find a pair of pants, father brought him back into the bathroom and again hit him on the buttocks with an open hand covered by a football glove. The CSW observed a small red mark

on Xavier's shoulder, which Xavier said he got when father threw him to the floor in the bathroom.

Xavier described an incident several months earlier when father hit him with a belt, leaving a bruise on his leg. Xavier reported father frequently left marks when he hit him, and said father also sometimes hit Jacob, Josiah, and T.J. with a belt. Xavier said he and his brothers used to tell their mother when father hit them, but they stopped doing so because father whipped them for reporting the abuse. Xavier said he was scared to go to father's home and believed father would whip him if he returned.

Anthony corroborated that father had hit Xavier several times on the morning of January 14. Anthony reported the abuse to his teacher. That afternoon, father demanded Anthony's cell phone password; Anthony refused to give it to him and tried to leave home on his bike. The paternal aunt, Tasha W., grabbed the bike to try to stop Anthony from leaving. Anthony broke away from his aunt, but father tackled him from behind, knocking him to the ground. Tasha called the police. Father then sat on Anthony until the fire department and law enforcement arrived.

Anthony said father hit him and his siblings as a form of discipline, sometimes with whatever was in father's hand. A few months earlier, father hit Anthony with a broom; on other occasions, father hit him with an open hand covered with a football glove.

Father admitted hitting Xavier on the buttocks with an open hand three or four times, but denied leaving any marks or bruises. Father told the CSW that he was aware of the law "and he can whip his children if he wants to." He said he uses corporal

punishment as a last resort when the children had been warned several times about misbehaving. According to father, when Xavier and Anthony returned home from school on January 14, he took away Anthony's cell phone as punishment for making false reports of abuse. Anthony tried to leave the home on his bike, and father grabbed and restrained him. The paternal aunt then called an ambulance because she and father believed Anthony was having a mental breakdown.

Anthony and Xavier's mother, Regina, said both boys had reported being hit by father with father's fists as a form of discipline. Anthony "because of his age and size" had not recently complained of physical discipline, but Xavier "constantly tells her he feels as if father . . . does not like him and that father hits him." Regina said that the prior year, Xavier returned from father's home with red welts on his upper thigh that he said were from father hitting him. According to Regina, the children reported being afraid to tell her when father hit them because when she confronted father, the boys got into trouble when they returned to father's home.

A physical exam of Xavier and Anthony corroborated their reports of abuse. Anthony was found to have multiple abrasions on his upper back and tenderness on his lower back. Xavier had an egg-sized purple bruise on his right shoulder, small purple petechiae (spots caused by broken capillary blood vessels) on both buttocks, and a bruise on his lower back.

#### *B. Petitions*

On February 5, 2016, DCFS filed a petition alleging that Anthony, Xavier, Josiah, and Jacob were juvenile court

dependents pursuant to Welfare and Institutions Code<sup>1</sup> section 300, subdivisions (a), (b), and (j), because father had physically abused Anthony and Xavier by striking them with his hand while wearing a football glove, and with belts, brooms, and sandals. The same day, Anthony, Xavier, Josiah, and Jacob were ordered detained from father and released to their mother.

Cesili and T.J. were removed from father on February 19, 2016, and placed with their paternal aunt, Tracy K. On February 23, 2016, a separate petition was filed alleging jurisdiction over Cesili and T.J. pursuant to section 300, subdivisions (a), (b), and (j). The petition alleged that the incidents of physical abuse of Anthony and Xavier put Cesili and T.J. at risk of harm; it also alleged additional incidents of physical abuse of Cesili, T.J., Jacob, and Josiah.

On February 24, 2016, a third petition was filed alleging that the physical abuse of Anthony, Xavier, Cesili, T.J., Jacob, and Josiah gave rise to jurisdiction over Benjamin pursuant to section 300, subdivisions (a), (b), and (j).<sup>2</sup> Benjamin was detained from father and released to his mother, Sarah.

*C. Jurisdiction and Disposition Hearing*

The juvenile court held a contested jurisdiction and disposition hearing over several days in August and September 2016. The testimony at that hearing was as follows.

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

<sup>2</sup> The petition also alleged jurisdiction over Sarah's daughter, S.K. It subsequently was determined that S.K. was not father's child, and the petition was dismissed as to S.K. on May 4, 2016.

(1) CSW Kellee Hunt

CSW Kellee Hunt testified that she did the initial child abuse investigation. She interviewed Anthony, Xavier, Josiah, Jacob, and Cesili at school on January 15, 2016. Anthony told her that the previous morning, Xavier had gotten into trouble for not putting on his pants. Anthony reported that “[d]ad brought [Xavier] in[to] the bathroom and dad spanked him with an open hand with a football glove. And Anthony reported that his dad put a sticky substance on that glove . . . because it provided a sting, but the glove prevented a mark. . . . They left for school, but [Xavier] was still whimpering, and dad proceeded to bring him back in the home . . . but the other children were in the car. When they came back out, Anthony asked Xavier what happened. He disclosed that he was spanked again because he was whimpering. When they got to school, Anthony asked Xavier if he was okay and, with tears in his eyes, he said no, and proceeded to go to class. [¶] Anthony stated that he was worried about his brother and . . . he went to talk to his counselor because he didn’t know what to do.” That afternoon, father was angry at Anthony for reporting the abuse of Xavier. Anthony attempted to leave the house on his bike; when his paternal aunt tried to stop him, he pushed his aunt away, and then father tackled him to the ground, leaving bruises on his back.

Anthony told Hunt that father frequently used corporal punishment on all the siblings, including whipping them with a belt, a broom, and a shoe. Hunt said that when Anthony disclosed these incidents, “[h]e was sad. I know he expressed that he missed his dad, but he seemed very forthcoming and truthful with the information that he provided.” Anthony expressed fear for himself and his siblings. He also said he had

stopped telling his mother when father hit him or his siblings because “his mother would contact the father and confront him about the use of corporal punishment and . . . [the siblings] would get into more trouble when they returned the following week to their father for their visit.”

Xavier told Hunt that on January 14, father had taken him into the bathroom, slammed him to the ground, causing him to have a red bruise on his shoulder, and then spanked him with an open hand with a football glove on it. Xavier began to cry as he disclosed this information and said he said he was afraid of his father. He also said that he had been physically disciplined in the past, as had all of his brothers.

Josiah, Jacob, and Cesili did not disclose to Hunt any physical discipline by father.

(2) Anthony

Anthony testified that he loved his father, and he believed his father loved him. He said father never hit him with a football glove, but did sock him with a closed fist, “[h]ard enough so I [w]ould stop doing whatever I was doing.” That happened more than once. Afterwards, father apologized, saying he had not meant to hit Anthony like that. His father also hit him with a broom once in 2015: “[We] was wrestling and I think we broke something. He hit us so we could stop, not that hard though.” It hurt “[a] little bit,” but did not leave a bruise. Anthony did not recall whether father ever kicked him as a form of discipline. He said father hit T.J. with a belt a couple of times; he did not know whether father hit Cesili with a belt, but he recalled father hitting Cesili with his hand while she was on the top bunk of their bunkbed.

Anthony said father had not physically disciplined him during the last two years. During the January incident, Anthony was bruised “[f]rom like the ground . . . [w]hen I was . . . trying to get out of his arms.” He said father did not hit Josiah or Jacob because “they don’t do nothing.”

Anthony said he reported the January 2016 incident to someone at school because Xavier “got whooped like twice.” He said he was not aware of any other times when Xavier was physically disciplined. The day Xavier was “whooped,” Anthony tried to leave father’s house on his bike, and father grabbed him in a “bear hug” and they fell to the ground.

Anthony said he now feels safe around his father, and he thinks it is safe for his brothers and sisters to be around father. He would like to go back to splitting his time between his mother’s and father’s homes. He wishes the court would terminate the dependency proceedings because “I think everything is better now. . . . [Father] uses words more now.”

(3) Xavier

Xavier testified that on the day in January that the police came to his house, father pushed him, but did not slam him to the ground. His dad did not cause the bruise on his shoulder. Father spanked him on his bottom with an open hand. The spanking stung. Before that incident, it had been several years since father had spanked him.

Xavier said he loved his dad and believed his dad loved him. He said he was not concerned his dad would harm him or his siblings, and he would like the judge to let him go back to living with his dad.



(4) Cesili

Cesili testified that father did not hit her as a form of discipline. She had never seen father hit any of her brothers, felt safe around her father, and did not think he would ever harm her. She said she would like to return to father's home.

(5) T.J.

T.J. testified that he would like to go back to living with father. He was not afraid of father, and said father had never hit him with an object or a closed fist.

(6) Paternal Aunt Tasha W.

Tasha lives with father, who is her brother. Father works the graveyard shift, and she cares for the children while he is at work. Regarding the January incident, Tasha said Xavier was not getting ready for school, and father took him into the bathroom and spanked him. Nothing about the interaction between father and Xavier led her to believe that the spanking was excessive. Later that afternoon, Anthony attempted to leave the house on his bike. Tasha put her hand on the bike so she could make eye contact with Anthony, and he grabbed her with both arms. At that point, father grabbed him from behind in a bear hug.

Father typically does not use physical discipline. He usually takes away the children's cell phones or other privileges. Tasha has never seen father spank or hit the children with a belt. Tasha believes the children are safe in father's care.

(7) Father

Father testified that the week leading up to the January incident, Xavier had been very disrespectful at home, and father had received a text from Xavier's teacher saying that he had been talking back at school and disrupting his class. The morning of

the incident, Xavier did not get ready for school after being asked several times to do so. Father took Xavier into the bathroom and spanked Xavier's bare bottom with father's open hand. That was the first time father ever spanked Xavier. Father had spanked Anthony once before, many years earlier. He never spanked any of the other children and never hit any of the children with objects. The incident with Anthony that afternoon was exactly as Tasha described.

Since getting involved with DCFS, father has taken a parenting class and had learned other, more effective strategies for disciplining his children. He said he would not use physical discipline again in the future because he did not want to be separated from his family again.

*D. Juvenile Court's Findings*

After hearing all the testimony, the juvenile court ruled in relevant part as follows:

"I think everyone testified well in this case and everyone had a certain level of credibility. The court particularly found the two older boys to be credible. Not only did they continue to essentially be consistent in the description of what had occurred, but they did that in the face of requesting that this court send them home. They actually testified factually in a manner that made it less likely that they would gain the result that they wanted and they're old enough to know they were doing that. [The court] found their testimony to be compelling and credible. [The court] [a]lso found [CSW Kellee Hunt's] testimony to be very credible. . . . [¶] . . . [¶]

"I think in the end there is a portion of this petition that is appropriately amended. I agree that we have a history of abuse

of these children, of some of these children. I'll go through that specifically in a moment.

"I think [the] football glove is concerning. The purpose of the football glove, the father couldn't explain to us. But from the reports and from the testimony put together, it appears to be both to cause additional pain and prevent excessive injury.

"I am not concerned about the situation with the bicycle. Frankly, I think the father acted appropriately. . . . [G]iven Anthony's emotional condition at that moment and whatever he was getting into with his aunt, I think the evidence is clear the father didn't inappropriately tackle him or hit him, but was attempting to control him and they fell to the ground. And, in fact, that's corroborated by Anthony who I find to be quite credible.

"The issues as [children's counsel] describes them are fairly straightforward: Did the parent conduct the acts for [a] disciplinary motive, [and] was that disciplinary motive because of the minor's behavior[?] I think in many of these cases, that is quite possible . . . .

"Was it necessary? I agree that is less clear. . . . I think some of this was unnecessary. But the real issue is number three, which is whether it was reasonable or excessive.

"Hitting children with brooms, hitting them with [a] football glove . . . . [The] children described [father] pushing Xavier into the bathroom where he sustained a bruise, hitting Cesili when she's on the top bunk . . . in a manner that this court can't picture as being [a] spank[ing] because she's up on the top bunk[,] . . . and punching Anthony in the chest and upper arms, all are clearly to this court excessive. They were excessive given the disciplinary purpose of the father. . . .

“So, sir, I’m not saying that your kids don’t need to be disciplined and I’m not saying you don’t sometimes have your hands full with your kids. But even the fact that your children have testified that you apologized to them for some of your actions indicate that in the end, you know that your actions were excessive.”

The court then sustained the following counts of the petitions, as amended:<sup>3</sup>

(a-1, j-1) Father physically abused Xavier by repeatedly striking him with father’s hands while wearing a football glove, inflicting bruises to the child’s buttocks. The father pushed Xavier, inflicting a bruise to his shoulder. On a prior occasion, the father struck the child with a belt, inflicting a bruise to the child’s leg. On prior occasions, the father struck Xavier with brooms and the father’s hand while wearing a football glove. On prior occasions, the child sustained bruises to the child’s body, due to the physical abuse of the child by father. Such physical abuse was excessive, endangered Xavier’s health and safety, and placed all of his siblings at risk of harm.

(a-2, j-2) Father physically abused Anthony by striking him with brooms and the father’s hand while wearing a football glove. On prior occasions, the father struck Anthony with his fists. On January 14, 2016, father forcibly pushed Anthony, inflicting a bruise. Such physical abuse was excessive, endangered Anthony’s health and safety, and placed all of his siblings at risk of harm.

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<sup>3</sup> The juvenile court made the findings described above as to each of the petitions. For simplicity, because the sustained allegations of the three petitions are virtually identical, we discuss them only once.

(a-4, j-4) Father physically abused Cesili by striking her with his hands while she was on a bunk bed and by kicking her. Such physical abuse was excessive, caused Cesili unreasonable pain and suffering, and placed her siblings at risk of harm.

With regard to disposition, the court said father had “come a long way” and was “most of the way to where [he] need[ed] to be.” However, the court believed father needed additional individual counseling to come to terms with the inappropriateness of his physical discipline, and also needed to be in conjoint counseling with Anthony and Xavier. The court therefore ordered that T.J., Cesili, Jacob, and Josiah could return home immediately, and Anthony and Xavier could return home after one conjoint counseling session, which the court believed could take place within the week. Benjamin remained placed with his mother under DCFS supervision. The court ordered father to participate in anger management classes, parenting classes, individual counseling, and family counseling.

Father timely appealed from the jurisdictional and dispositional orders.

*E. Subsequent Hearings*

On April 28, 2017, while this appeal was pending, the juvenile court terminated jurisdiction over Cesili, T.J., and Benjamin. Cesili and T.J. were returned to father’s sole custody, and Benjamin was returned to his mother’s custody. On May 5, 2017, the juvenile court terminated jurisdiction over Anthony, Xavier, Josiah, and Jacob. We have taken judicial notice of the juvenile court’s April 28 and May 5, 2017 orders.

## DISCUSSION

### I.

#### **Father's Appeal Is Not Moot**

DCFS urges that father's appeal should be dismissed because the termination of juvenile court jurisdiction has rendered the appeal moot. Father disagrees, urging that although the children have been returned to him, the jurisdictional findings from which he has appealed may affect him in the future.

We conclude that father's appeal is not moot. " 'As a general rule, "an appeal presenting only abstract or academic questions is subject to dismissal as moot." [Citation.]' (*In re Jody R.* (1990) 218 Cal.App.3d 1615, 1621.) However, where a judgment dismissing the dependency action is challenged on appeal the case 'is not moot *if* the purported error is of such magnitude as to infect the outcome of [subsequent proceedings] *or* where the alleged defect undermines the juvenile court's initial jurisdictional finding. Consequently[,] the question of mootness must be decided on a case-by-case basis.' (*In re Kristin B.* (1986) 187 Cal.App.3d 596, 605, fn. omitted.)" (*In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547.)

Here, father challenges each of the juvenile court's jurisdictional findings. Moreover, father notes the findings could affect him in future proceedings and has resulted in his entry into the Child Abuse Central Index (CACI). Accordingly, we will consider the merits of father's appeal.

## II.

### **Substantial Evidence Supports the Juvenile Court’s Jurisdictional Findings**

Father contends that substantial evidence does not support the juvenile court’s findings of child abuse. Although father concedes he spanked Xavier, he urges that spanking is not physical abuse; Anthony’s and Xavier’s claims of physical abuse were contradicted by four of their siblings; and there was no evidence of serious physical injury.

#### *A. Standard of Review*

“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. [Citations.]” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450–451.)

#### *B. Analysis*

Section 300, subdivision (a), provides that a child may be adjudged a juvenile court dependent if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian. For purposes of this subdivision, . . . ‘serious physical harm’ does not include reasonable and age-

appropriate spanking to the buttocks if there is no evidence of serious physical injury.”

“Whether a parent’s use of discipline on a particular occasion falls within (or instead exceeds) the scope of this parental right to discipline turns on three considerations: (1) whether the parent’s conduct is genuinely disciplinary; (2) whether the punishment is ‘necess[ary]’ (that is, whether the discipline was ‘warranted by the circumstances’); and (3) ‘whether the amount of punishment was reasonable or excessive.’ [Citations.]” (*In re D.M.* (2015) 242 Cal.App.4th 634, 641.)

In the present case, we assume without deciding that the punishment at issue was “disciplinary” and “‘warranted by the circumstances.’” (*In re D.M.*, *supra*, 242 Cal.App.4th at p. 641.) Contrary to father’s contention, however, we conclude that substantial evidence supported the juvenile court’s conclusion that the amount of punishment father administered was excessive.

Father asserts that apart from Xavier’s spanking, there was “not sufficient evidence that the other alleged discipline even occurred” because he, Tasha, Cesili, and T.J. testified that it had not occurred. While we agree that the testimony was contradictory, as we have said, “[e]vidence from a single witness . . . can be sufficient to support the trial court’s findings. [Citations.]” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) Here, CSW Kellee Hunt, Anthony, and Xavier all testified to many incidents of physical discipline that preceded the January 14, 2016 incident. Accordingly, notwithstanding the contradictory nature of testimony, there was substantial evidence of physical discipline beyond that which occurred on January 14.



Father also contends that even if there is evidence that he physically disciplined his children, “there was no evidence that the discipline was excessive.” We do not agree. Hunt testified that when she interviewed Anthony at school on January 15, 2016, he told her that father had spanked Xavier on two separate occasions that morning, using his open hand covered by a football glove and a sticky substance. Anthony further told Hunt that father frequently used corporal punishment on all the siblings, including whipping them with a belt, a broom, and a shoe. Xavier gave Hunt a similar account, saying that on January 14, father had taken him into the bathroom, slammed him to the ground, causing him to have a red bruise on his shoulder, and then spanked him with an open hand covered with a football glove. He also said that he had been physically disciplined in the past, as had all of his brothers. Further, Hunt testified that on the day following the incident, both Anthony and Xavier told her they were afraid of father.

Anthony testified at the jurisdictional hearing that in the past father had hit him with a closed fist, for which father subsequently apologized, and once hit him with a broom. Anthony also testified that father hit T.J. with a belt a couple of times, and once hit Cesili. And Xavier testified that on January 14, father had pushed him and spanked him on his bottom with an open hand.

Finally, Anthony’s and Xavier’s accounts of physical discipline were corroborated by physical evidence. During a forensic exam on January 15, Anthony was found to have multiple abrasions on his upper back and tenderness on his lower back, and Xavier was found to have an egg-sized bruise on his right shoulder, small purple petechiae on both buttocks, and a

bruise on his lower back. Further, Anthony's and Xavier's mother, Regina, told Hunt on January 15 that the prior year, Xavier had returned from father's house with red welts on his upper thigh, which Xavier said were caused by father hitting him.

Considered as a whole, therefore, the record contains substantial evidence of physical discipline of Anthony and Xavier that is properly characterized as "excessive." Further, the physical abuse of Anthony and Xavier constituted substantial evidence that their siblings were at risk of serious physical harm.

**DISPOSITION**

The jurisdictional orders are affirmed.

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REPORTS**

EDMON, P. J.

We concur:

LAVIN, J.

DHANIDINA, J.\*

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