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

In re B.C., a Person Coming Under the Juvenile Court Law.	B294017
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,  Plaintiff and Respondent,  v.  K.C.,  Defendant and Appellant.	Los Angeles County Super. Ct. No. 18CCJP05204A

APPEAL from an order of the Superior Court of Los Angeles County, Philip L. Soto, Judge. Affirmed.

K.C., in pro. per., for Defendant and Appellant.

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

## **INTRODUCTION**

In this dependency appeal, K.C. (father) challenges two jurisdictional findings under Welfare and Institutions Code section 300, subdivision (b).<sup>1</sup> During the pendency of this appeal, the dependency court terminated jurisdiction and awarded the minor's mother sole legal and physical custody of him, with limited monitored visitation for father.

We conclude the jurisdictional finding predicated on father's recurring domestic violence is supported by substantial evidence. As that finding provided the court a sufficient basis for dependency jurisdiction, we affirm the adjudication order.

## **FACTS AND PROCEDURAL BACKGROUND**

Mother<sup>2</sup> and father, who are divorced, have one child (the minor) who is now eight years old. Prior to this dependency proceeding, they shared legal and physical custody of the minor.

The minor came to the attention of the Department of Children and Family Services (Department) in July 2018, after police responded to a report of domestic violence at father's home while the minor was in father's custody. Father had engaged in a physical altercation (the DV incident) with his then-fiancé (girlfriend). At the time of father's arrest, mother took custody of the minor. The Department later filed a petition under section 300 and detained the minor from father.

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

<sup>2</sup> Mother is non-offending and is not a party to the present appeal.

The Department subsequently learned that father had a history of drug use and that his girlfriend may also have a history of drug use. The Department's petition under section 300 generally alleged jurisdiction as follows:

Under subdivision (a):

a-1: The DV incident endangers the child's physical health and safety and places the child at risk of serious physical harm, damage, and danger.

Under subdivision (b):

b-1: The DV incident endangers the child's physical health and safety and places the child at risk of serious physical harm, damage, and danger.

b-2: Father has a 25-year history of substance abuse and is a current user of cocaine. Father has been under the influence of illicit drugs while the minor was in father's care. Father's substance abuse endangers the child's physical health and safety and places the child at risk of serious physical harm, damage, and danger.

b-3: Father created a detrimental and endangering home environment for the minor by allowing his girlfriend, a current user of cocaine, to reside in the home and have unlimited access to the minor. Father's failure to protect the child from that environment endangers the minor's physical health and safety and places the child at risk of serious physical harm.

b-4: Father sexually abused an unrelated 13-year-old girl and as a result has a criminal conviction for contributing to the delinquency of a minor. Such sexual abuse endangers the minor's physical health and safety and places the minor at risk of serious physical harm, damage, danger, and sexual abuse.

And under subdivision (d):

d-1: Father sexually abused an unrelated 13-year-old girl and as a result has a criminal conviction for contributing to the delinquency of a minor. Such sexual abuse endangers the minor's physical health and safety and places the minor at risk of serious physical harm, damage, danger, and sexual abuse.

The court adjudicated the matter in late September 2018, finding only counts b-1 and b-4 true.

With regard to disposition, the court ordered the minor removed from father and released the minor to mother, giving her full educational rights. Father was allowed monitored visitation with the minor; father's girlfriend was not allowed to have any contact with the minor, however. Father timely appealed from the adjudication and disposition order.

On March 27, 2019, while this appeal was pending, the court terminated jurisdiction over the minor and stayed its order. Shortly thereafter, the court issued a custody order awarding

mother sole legal and physical custody of the minor, with monitored visitation for father.<sup>3</sup>

## DISCUSSION

Father contends the court erred in finding jurisdiction based on the allegations in counts b-1 and b-4. We conclude substantial evidence supports the court's finding on count b-1. And as that count provided a sufficient basis for dependency jurisdiction, it is unnecessary to consider father's challenge to count b-4.

### 1. Merits Review

Although the Department asked this court to take judicial notice of the orders terminating jurisdiction over the minor and giving mother sole legal and physical custody, the Department did not request that we dismiss the appeal as moot. For his part, father argues we should consider the appeal on the merits because the court's orders may prejudice him in future family law or dependency proceedings. We agree "and 'in an abundance of caution and because dismissal of the appeal operates as an affirmance of the underlying judgment or order [citations], we consider the merits of [the] appeal.'" (*In re C.V.* (2017) 15 Cal.App.5th 566, 571.)

### 2. Governing Legal Principles

We review jurisdictional orders for substantial evidence. (*In re D.C.* (2015) 243 Cal.App.4th 41, 55.) In doing so, we view

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<sup>3</sup> At the Department's request, we have taken judicial notice of the minute orders dated March 27, 2019 and April 2, 2019. (Evid. Code, §§ 452, subds. (c) & (d), 459, subd. (a).)

the record in the light most favorable to the juvenile court's determinations, drawing all reasonable inferences from the evidence to support the court's findings and orders. Issues of fact and credibility are the province of the court and we neither reweigh the evidence nor exercise our independent judgment. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) But substantial evidence "is not synonymous with any evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.] ... 'The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.' [Citation.]" (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393–1394, italics omitted; *In re Yolanda L.* (2017) 7 Cal.App.5th 987, 992.)

The challenged jurisdictional findings are based on section 300, subdivision (b)(1), which as pertinent here authorizes a juvenile court to exercise dependency jurisdiction over a child if 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 ... to adequately supervise or protect the child[.]" The court's jurisdictional findings under section 300 must be made by a preponderance of the evidence. (§ 355, subd. (a); *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248.)

**3. The court did not abuse its discretion by considering hearsay evidence included in the Department's reports.**

Father first asserts the court erroneously admitted "copious amounts of hearsay" contained in the Department's reports and he argues the hearsay evidence was prejudicial. We disagree.

Hearsay evidence is routinely, and lawfully, included in reports prepared by the Department. “A social study prepared by the petitioning agency, and hearsay evidence contained in it, is admissible and constitutes competent evidence upon which a finding of jurisdiction pursuant to Section 300 may be based, to the extent allowed by subdivisions (c) and (d).” (§ 355, subd. (b).) According to our Supreme Court, such a study “fits within the class of ‘legally admissible’ evidence on which a court can rely in a jurisdictional hearing, despite the fact that a social study is itself hearsay and may contain multiple levels of hearsay.” (*In re Cindy L.* (1997) 17 Cal.4th 15, 21.) The weight of that evidence is limited, however, in certain circumstances. “If any party to the jurisdictional hearing raises a timely objection to the admission of specific hearsay evidence contained in a social study, the specific hearsay evidence shall not be sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based” unless it fits into one of the enumerated exceptions. (§ 355, subd. (c)(1).) One exception, pertinent here, is that hearsay statements contained in a social study may be admitted over objection if the hearsay declarant is available for cross-examination. (§ 355, subd. (c)(1)(D).)

Although father identifies six types of objectionable hearsay statements on appeal, he only objected to two types of hearsay statements below: statements relating to a recording mother made of a conversation she had with father’s girlfriend and statements made by mother about her attorney and the Los Angeles Police Department. The court overruled the objections, stating the identified statements would be admitted and the court would “give them whatever weight ... that may be justified.” We limit our analysis to these two categories,

consistent with section 355, subdivision (c)(1). We also note that this provision does not preclude the admission of hearsay evidence. Instead, it simply requires that when an objection is asserted, hearsay evidence must be corroborated.

Father's concerns about the first category of hearsay are easily resolved. The statements father identified were contained in the Department's detention report as well as the jurisdiction and disposition report. Apparently, mother recorded a conversation she had with father's girlfriend shortly after the DV incident occurred. Mother played the recording for a Department social worker, who then summarized the content of the recording in her reports. The conversation was focused mainly on recent drug use by father and his girlfriend. As noted, however, the court did not find true the jurisdictional allegations relating to their alleged drug use. In fact, the court specifically stated that although there was evidence father had a history of drug use, there was insufficient evidence to sustain the allegations that father and/or his girlfriend were currently using drugs. We conclude, therefore, that even if the court erred in considering this evidence, any error was not prejudicial. (Cal. Const., art. VI, § 13 [providing that an appellant must demonstrate error and prejudice from that error].)

As for the second category of hearsay evidence, father identifies three specific matters contained in the detention report and jurisdiction and disposition report that he claims were improperly admitted over his objection. To the extent father identifies statements purportedly made by mother concerning his alleged drug use, we again conclude those statements are necessarily not prejudicial. One of the items identified by father is a paragraph summarizing mother's statements to a



Department social worker describing the events surrounding father's arrest. With the exception of one statement in which mother purports to relay a statement by father's girlfriend about father's drug use, mother's detailed account of law enforcement activity at father's house after the DV incident does not appear to be relevant to the court's jurisdictional finding.

Finally, father objects to the court's consideration of the following passage contained in the detention report:

"Mother informed CSW three years ago she received a call from LASD Lost Hills asking if she was safe. She reported that the deputy informed her that they had received a call from [father's ex-wife], who said that father had a knife and said he was going to kill mother. Mother informed CSW she obtained a 30-day restraining order at that time."

Plainly, this portion of the report contains multiple levels of hearsay. But because mother was available at the adjudication to testify in person, father's objection is not well taken. (§ 355, subd. (c)(1)(D) [hearsay statements contained in a social study may be admitted over objection if the hearsay declarant is available for cross-examination].)

#### **4. Substantial evidence supports the jurisdictional finding on count b-1, relating to domestic violence.**

##### **4.1. The Allegation**

The court found the following jurisdictional allegation true:

"On 07/26/2018, the child[s] father ... and the father's female companion ... engaged in a violent altercation in which the father struck the female companion's face while the child was present in the family home. The female companion pushed the father causing the father to fall to the ground. The female

companion scratched the father's arm. The father broke the female companion's cell phone. The female companion sustained an abrasion with redness to the female companion's eye and face. The father sustained an abrasion to the father's arm. The father has a criminal conviction for PC-Inflicting Corporal Injury: Spouse/Cohabitant. Such violent conduct on the part of the father against the father's female companion endangers the child's physical health and safety and places the child at risk of serious physical harm, damage and danger."

#### **4.2. Additional Facts**

The DV incident occurred at father's home and the minor was present but was in another part of the house at the time of the incident. The minor did not see the incident but heard father and his girlfriend yelling at each other. He also heard father's girlfriend crying after the incident. The minor saw the girlfriend's broken cell phone and knew father had broken it. And despite father's attempts to interfere with the investigating police officer's interview, the minor reported that he heard father's girlfriend say, "You just hit me." The minor also told a Department social worker that he had previously seen father and his girlfriend "doing stuff," by which he meant, "like hurt each other."

Father denied the allegation. Although father admitted he broke his girlfriend's cell phone, he repeatedly insisted he hit her accidentally. Moreover, father's therapist told a Department social worker that father "is minimizing the domestic violence" and "needs to address his issues of domestic violence and drug use rather than trying to deflect blame when confronted by his current situation."

Father's girlfriend provided conflicting reports about the DV incident. In particular, although she initially reported that father had intentionally slapped her in the face and she sustained some visible injury as a result, she later recanted and said the contact was accidental and she had not been injured. The officer on scene after the incident observed, however, visible injury to the girlfriend's face. Father's girlfriend also admitted that she pushed father away from her during the DV incident and he fell backward onto the floor.

The DV incident was not an isolated one. In the course of the investigation, the Department discovered that father had a prior domestic violence conviction in 2004. Father explained that at the time, he was "off the rails in regards to [his] substance abuse" and hit his ex-wife (not mother) in the face with the back of his hand, causing visible injuries, while two of his other children were present. He pled no contest to one count of inflicting corporal injury on a spouse. In addition, mother reported that father, speaking of his ex-wife, once said, "I wish I would've killed that bitch a long time ago." And although father never physically threatened mother while they were together, she reported that father had threatened her life twice. On one of those occasions, law enforcement officers contacted mother after they received a call from father's ex-wife, who advised that father had a knife and said he was going to kill mother. On the basis of that threat, mother obtained a restraining order against father.

At the time of father's arrest, police officers recovered two semi-automatic assault-style weapons (AR-15s) from the master bedroom.

### 4.3. Analysis

Domestic violence may be a valid basis for the assertion of dependency jurisdiction over a child. “Domestic violence is always a serious concern, and any propensity to it is certainly highly relevant as regards children’s welfare” (*Guardianship of Simpson* (1998) 67 Cal.App.4th 914, 938.) Where (as here) the child has not suffered serious physical harm or illness as a result of domestic violence, the jurisdictional allegation must be supported by evidence that the violence is ongoing, and the child is at substantial risk of such harm at the time of the jurisdiction finding. (See *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717; *In re Heather A.* (1996) 52 Cal.App.4th 183, 194–195.)

Our courts have frequently explained the relationship between section 300, subdivision (b) and domestic violence: “ [D]omestic violence in the same household where children are living ... is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.’ [Citation.] Children can be ‘put in a position of physical danger from [spousal] violence’ because, ‘for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg ... .’ (*Ibid.*) [¶] ‘Both common sense and expert opinion indicate spousal abuse is detrimental to children.’ (*In re Benjamin D.* (1991) 227 Cal.App.3d 1464, 1470, fn. 5; see *In re Sylvia R.* (1997) 55 Cal.App.4th 559, 562; Fields, *The Impact of Spouse Abuse on Children and Its Relevance in Custody and Visitation Decisions in New York State* (1994) 3 Cornell J.L. & Pub. Pol’y 221, 228 [‘Studies show that violence by one parent against another harms children even if they do not witness it.’]; Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child*

*Custody Decisions* (1991) 44 Vand. L.Rev. 1041, 1055–1056  
[‘First, children of these relationships appear more likely to experience physical harm from both parents than children of relationships without woman abuse. Second, even if they are not physically harmed, children suffer enormously from simply witnessing the violence between their parents. ... [¶] Third, children of abusive fathers are likely to be physically abused themselves.’ (Fns. omitted.)].)” (*In re E.B.* (2010) 184 Cal.App.4th 568, 576.)

Father’s past violent behavior toward his girlfriend, mother, and his ex-wife evidences a long-standing pattern of domestic violence. “‘[P]ast violent behavior in a relationship is “the best predictor of future violence.” Studies demonstrate that once violence occurs in a relationship, the use of force will reoccur in 63% of those relationships. ... Even if a batterer moves on to another relationship, he will continue to use physical force as a means of controlling his new partner.’ (Comment, *Beating Again and Again and Again: Why Washington Needs a New Rule of Evidence Admitting Prior Acts of Domestic Violence* (2000) 75 Wash. L.Rev. 973, 977–978, fns. omitted.)” (*In re E.B.*, *supra*, 184 Cal.App.4th at p. 576; *In re R.C.* (2012) 210 Cal.App.4th 930, 941–942.) The fact that father continues to minimize the significance of the DV incident and denies a pattern of violent conduct presents further cause for alarm. Put differently, “[o]ne cannot correct a problem one fails to acknowledge.” (*In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197.)

On this record, we conclude substantial evidence supports the court’s finding that the minor is at substantial risk of serious physical harm in father’s custody.

**DISPOSITION**

The court's adjudication order is affirmed.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

DHANIDINA, J.