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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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

In re J.H., a Person Coming Under the Juvenile Court Law.	B271146 (Los Angeles County Super. Ct. No. DK05861)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. ADRIAN H. et al., Objectors and Appellants.	

APPEALS from an order of the Superior Court of Los Angeles County, Michael L. Miller, Juvenile Court Referee. Dismissed.

Matthew I. Thue, under appointment by the Court of Appeal, for Objector and Appellant Adrian H.

Joseph T. Tavano, under appointment by the Court of Appeal, for Objector and Appellant Johnny H.

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

INTRODUCTION

Adrian H. and Johnny H. appeal from the juvenile court's order removing their six-year-old son, J.H., from their custody pursuant to a supplemental petition under Welfare and Institutions Code section 387.[1] The supplemental petition alleged a previous order placing J.H. in the home of his parents was not effective in protecting him from the risk of serious physical harm because his parents neglected dietary guidelines, medical appointments, and other measures necessary to address J.H.'s obesity. Johnny contends insufficient evidence supported the juvenile court's finding that this allegation was true. He and Adrian also contend the court erred in ordering removal because there were other reasonable means of protecting J.H. from the danger associated with his weight gain.

The juvenile court subsequently returned J.H. to the home of his parents. Because the appeals from the removal order are moot and Johnny's challenge to the initial jurisdiction finding is untimely, we dismiss both appeals.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Petition, Initial Removal, and Reunification*

In August 2014 the Los Angeles County Department of Children and Family Services detained then five-year-old J.H. and his older siblings, K.H. and S.H., from their parents' home and filed a petition alleging the children came within the jurisdiction of the juvenile court under section 300, subdivisions

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[1] Statutory references are to the Welfare and Institutions Code.

(a), (b), and (j). The Department alleged the children were at substantial risk of serious physical harm because, among other things, (1) Johnny and Adrian were growing 159 marijuana plants in their yard and allowing the children to cut and water the plants; (2) Johnny and Adrian failed to maintain a sanitary home; (3) Johnny had a history of drug abuse, used marijuana, and cared for the children while under the influence of marijuana; and (4) Johnny and Adrian failed to take J.H., who was overweight, to a nutritionist.

At the time of the detention, a Department social worker observed J.H. was "morbidly obese," needed help from his siblings to get up from the couch, and breathed heavily.[2] J.H., who turned five years old on the day before his detention, was three feet 10 inches tall, weighed between 116 and 120 pounds, and had a waist size of 42 inches. Adrian acknowledged J.H.'s pediatrician had referred him to a nutritionist, but Adrian was unable to take J.H. to the appointment, and no one else had taken him.

In October 2014 the juvenile court sustained the petition, finding the children were persons described by section 300, subdivision (b). The court found true the allegations concerning J.H.'s weight and his parents' failure to take him to a nutritionist. The court declared the children dependents of the court, removed them from their parents' custody, and directed the Department to provide family reunification services.

The Department placed J.H. in foster care, where he received a healthful, nutritious diet. During supervised visits Department social workers tried (with mixed success) to prevent

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[2] A public health nurse and a family nurse practitioner diagnosed J.H. as "morbidly obese."

Adrian and Johnny from giving J.H. excessive amounts of high-calorie food. By June 2015 J.H. weighed 68 pounds and had a waist size of 26 inches. By August 2015, approximately one month after the juvenile court ordered unmonitored parental visits, J.H. had regained two pounds and added 3 inches to his waist.

In October 2015, at the 12-month permanency review hearing (§ 366.21, subd. (f)), the juvenile court ordered that J.H. and his siblings remain dependent children of the court under section 300, subdivision (b), returned them to their parents' home under Department supervision, and directed the Department to provide family maintenance services.[3] J.H. was now four feet one-half inches tall and weighed 74 pounds.

B. *The Supplemental Petition and Second Removal*

After the juvenile court returned J.H. to his parents' home, a Department social worker who visited the home noticed J.H. was gaining weight and having difficulty breathing. She also notified Johnny the children needed medical appointments, in part to track J.H.'s weight, but neither Johnny nor Adrian made any such appointments. In January 2016 the social worker asked Johnny to take J.H. to an urgent care facility because of a bruise around J.H.'s eye, and Johnny did so. From the records of that visit, the social worker learned J.H. had gained 30 pounds in the three months since returning to his parents' home. The social worker also spoke with J.H.'s doctor, who reported that dark rings on J.H.'s skin were "acanthrothis nigrans, a rash that develops for those who are prediabetic."

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[3] On July 28, 2016 the juvenile court terminated its jurisdiction over J.H.'s siblings.

On February 2, 2016 the Department again detained J.H. and subsequently filed a supplemental petition under section 387, alleging the order returning J.H. to his parents' home had not been effective in protecting him from the risk of serious physical harm. The Department alleged Johnny and Adrian had neglected J.H.'s obesity and related health problems by, among other things, failing to follow recommended dietary restrictions and failing to take J.H. to medical appointments, which caused J.H to gain 30 pounds within the last three months, further endangering his health.

On February 29, 2016 and March 2, 2016 the juvenile court held a hearing on the supplemental petition. The court sustained the supplemental petition, removed J.H. from his parents' home, and placed him in the care of the Department for suitable placement. The court adopted a reunification case plan that required, among other things, that Johnny and Adrian retake a nutrition class and work with an in-home nutritionist. Johnny and Adrian timely appealed.

On January 17, 2017 the juvenile court held an 18-month permanency review hearing (§ 366.22) for J.H., at the conclusion of which the court terminated its suitable placement order and returned J.H. to his parents' home under the Department's supervision.[4] On January 18, 2017 we asked the parties to file letter briefs addressing whether, in light of the juvenile court's January 17, 2017 orders, we should dismiss the appeals as moot. Johnny and Adrian submitted letter briefs.

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[4] We take judicial notice of the juvenile court's January 17, 2017 minute order pursuant to Evidence Code sections 452, subdivision (d), and 459.

DISCUSSION

"When an agency seeks to change the placement of a dependent child from a parent's care to a more restrictive placement, such as foster care, it must file a section 387 petition. [Citation.] The petition must allege facts that establish by a preponderance of the evidence that a previous disposition order was ineffective, but it need not allege any new jurisdictional facts or urge additional grounds for dependency because the juvenile court already has jurisdiction over the child based on its findings on the original section 300 petition. [Citations.] If the court finds the allegations are true, it conducts a dispositional hearing to determine whether removing custody is appropriate. [Citations.] "'The ultimate 'jurisdictional fact' necessary to modify a previous placement with a parent or relative is that the previous disposition has not been effective in the protection of the minor.'" (*In re F.S.* (2016) 243 Cal.App.4th 799, 808.) We review for substantial evidence a juvenile court's findings regarding the truth of the allegations in a supplemental petition and whether removal is appropriate. (*Id.* at p. 811; *In re T.W.* (2013) 214 Cal.App.4th 1154, 1161.)

An appeal, however, is moot if the reviewing court cannot grant effective relief. (*In re A.B.* (2014) 225 Cal.App.4th 1358, 1364; *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054; see *In re N.S.* (2016) 245 Cal.App.4th 53, 60 ["the critical factor in considering whether a dependency appeal is moot is whether the appellate court can provide any effective relief if it finds reversible error"]; *In re E.T.* (2013) 217 Cal.App.4th 426, 436 ["[a]n appeal may become moot where subsequent events, including orders by the juvenile court, render it impossible for the

reviewing court to grant effective relief"]; *In re Pablo D.* (1998) 67 Cal.App.4th 759, 761 [appeal was moot where the minor sought to reverse an order for reunification services and the reviewing court was "unable to fashion an effective remedy" because the services already had been provided].) Because the appeals in this case seek reversal of the juvenile court's findings and removal order pursuant to the supplemental petition, and the juvenile court has now returned J.H. to his parents' home, there is no effective relief we could give Johnny and Adrian "beyond that which [they have] already obtained." (*In re N.S.*, at p. 62.) Therefore, the appeals from the disposition order removing J.H. from his parents' custody are moot.

In his letter brief, Johnny argues his appeal is not moot because it challenges not only the juvenile court's findings and order on the supplemental petition, but also the court's initial jurisdiction under section 300, subdivision (b). He suggests "weight gain" is not a serious physical harm under section 300, subdivision (b), and any risk to J.H.'s health was mere "speculation."

To the extent Johnny's appeal challenges the juvenile court's initial jurisdiction finding, however, it is untimely. "[A] challenge to the jurisdictional findings must be raised in an appeal from the dispositional order," and "'[f]ailure to appeal from an appealable dispositional order waives any substantive challenge to the jurisdictional findings.'" (*In re T.W.* (2011) 197 Cal.App.4th 723, 729; accord, *In re A.O.* (2015) 242 Cal.App.4th 145, 148.) Johnny cannot challenge the juvenile court's initial jurisdiction finding in this appeal from the court's order on the supplemental petition. (*In re Isaiah W.* (2016) 1 Cal.5th 1, 7 ["'"[a]n appeal from the most recent order entered in a

dependency matter may not challenge prior orders for which the statutory time for filing an appeal has passed"""].)

DISPOSITION

The appeals are dismissed.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.