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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re E.W., a Person Coming
Under the Juvenile Court Law.

B283353
(Los Angeles County
Super. Ct. No. DK18270)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

W.W.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Robert S. Wada, Juvenile Court Referee. Dismissed.

Jesse McGowan, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Sally Son, Deputy County
Counsel, for Plaintiff and Respondent.

* * * * *

W.W. (father) challenges the juvenile court's order exercising jurisdiction over his son E.W. (born July 2013). The juvenile court sustained identical factual allegations of domestic violence in E.W.'s presence under both Welfare and Institutions Code section 300, subdivisions (a) and (b)(1).¹ On appeal, father concedes substantial evidence supported the exercise of jurisdiction under section 300, subdivision (b)(1), but argues the same evidence is insufficient to satisfy section 300, subdivision (a). Because we can grant father no effective relief, we dismiss his appeal.

FACTUAL AND PROCEDURAL BACKGROUND

On July 12, 2016, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition alleging the following ground for jurisdiction under section 300, subdivisions (a) and (b)(1): "The child [E.W.]'s mother, [N.N.] and the father, [W.W.] engaged in a violent altercation in the presence of the child. On 07/07/16, the father pushed and slapped the mother's face with the father's open hand. The mother punched the father's head with the mother's closed fist. The father sustained a scratch on the father's arm. On 07/07/16, the mother and the father were arrested for Domestic Battery. The violent conduct by the child's parents endangers the child's physical health and

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

safety, creates a detrimental home environment, and places the child at risk of serious physical harm, damage, and danger.”

According to the petition, on July 7, 2016, mother called 911 and told the responding officer father had pushed her and slapped her in the face. Father, who was a sheriff’s deputy, stated mother punched him on the back of his head. The responding officer noted a small scratch on the back of father’s arm. Mother and father were both arrested, and E.W. was taken into protective custody.

A police report of the incident indicated father told the responding officer that mother had punched him in the back of his head and had bitten him, though the officer observed no signs of trauma and saw a red mark on his arm that was not consistent with a bite. The officer smelled alcohol, and father said he had had a few beers earlier in the evening. Father explained that mother “started slapping at him” during an argument. He told her to go upstairs before something bad happened. When she came toward him, he squirted her with a water bottle. She continued toward him, and as he began to walk away, she punched him on the back of the head, grabbed him, and bit him along the back of his arm. Fearing E.W. would wake, father headed toward the child’s room.

Mother told the officer E.W. was sleeping between her legs on the sofa when she and father began to argue. He squirted her with a water bottle, so she picked up E.W. and walked out of the room. Father punched her in the back of the head, although the officer observed no trauma. She said E.W. was present “the whole time.”

The police report noted E.W.’s demeanor was calm and he did not appear scared or traumatized in any way.

In an interview in jail, mother said father had been drinking alcohol throughout the day when they got into an argument. During the argument, father picked up E.W. and went to the bedroom. Mother told father she was going to leave and take E.W. with her. Father refused to give E.W. to her, and when she tried to take him, father pushed her and slapped her in the face. She called 911. She denied she hit father and said this was the first time father had hit her. She was released from jail the next day and no charges were filed against her. She returned home to father.

A few days after she was released from jail, mother gave the social worker a different account of the incident. She said she and father had been arguing, and he asked her to leave the home. She refused to leave and tried to go to E.W.'s room, but father blocked the stairwell and she "accidentally" scratched his arm. Father did not push, punch, or slap her, and she did not push, punch, or slap him. She admitted she "did make some of the stuff up" and "embellished the story."

Father reported to the social worker that the incident had been "blown out of proportion" and had been a "misunderstanding." He and mother began arguing and he asked her to leave the home. He then took E.W. to his room. When he returned, he blocked mother from coming up the stairs, at which point she pushed past him and may have scratched him. He did not slap, punch, or push mother, and she did not slap or punch him. He denied any previous domestic violence incidents between them.

In the jurisdiction/disposition report, mother continued to acknowledge she "embellished" her initial report. She said father had one beer with dinner and two to three beers later. He put

E.W. to sleep on the couch. He began discussing politics and became upset when mother did not want to talk. He took E.W. upstairs to bed. When he returned, he asked mother, “Why don’t you just leave?” They argued, and when mother tried to go upstairs to get E.W., father blocked her way. As she grabbed the handrail, she accidentally scratched him. Father threatened to call the police, and mother actually called them to report domestic violence. Father told her that someone would now be arrested because she called. Because mother believed someone would be arrested, she embellished her story to the police. When interviewed by the social worker in jail, mother “had to keep up [her] lie.”

Father maintained the incident was “blown out of proportion.” He explained he and mother began arguing and he asked her to leave the home. She said she would not leave without E.W., and when he would not allow that, she became upset and called the police. He went upstairs to get E.W. and waited outside with him. He told the responding officer mother had scratched his arm and pointed out the mark. He continued to deny he pushed or slapped mother, or that mother punched him, although he admitted telling the responding officer a different story. He explained mother “grabbed” his arm and scratched him when he blocked her from going up the stairs. He said E.W. was not present during the argument.

DCFS located a police report from 2007 documenting a domestic incident between father and his then-girlfriend. During the altercation, father threw things, broke his girlfriend’s cell phone, and put her in a headlock. When she jumped on him and scratched his neck, he pushed her off and bit her once in the arm. He called the police. His girlfriend told police father bit her

twice, scratched her, and grabbed her throat. She said this had happened in the past. Officers observed scratches on father's face and scratches on his girlfriend's arm, neck, and hip, and a small cut on her wrist.

When testifying at the jurisdiction/disposition hearing, mother continued to deny she punched or bit father and maintained that she had embellished her story to police on the night of the incident because she did not want to go to jail. She continued telling her false story while in jail because she "felt like I had to continue saying what I had said." She testified she was enrolled in conjoint counseling with father and had improved her ability to manage disagreements with him.

Father testified E.W. was asleep upstairs during the altercation with mother. He continued to claim nothing physical occurred. He denied telling police mother punched or slapped him, and although he did spray her with the water bottle, he did not chase her. Any wrong information in the police report was a "misunderstanding." Though father attended conjoint and individual counseling, neither addressed domestic violence.

The court sustained the petition as pled, concluding the parents' domestic violence placed E.W. at risk of future harm. It credited the parents' first version of the incident involving physical violence and rejected their later denials. It also cited father's prior incident of domestic violence.

For disposition, the court ordered E.W. removed from the parents and placed with a maternal aunt, ordered the parents to attend conjoint counseling, ordered father be given unmonitored visitation without mother present, and ordered mother be given unmonitored visits and overnights in the home of maternal aunt. Father timely appealed.

At a six-month review hearing after father appealed, the court returned E.W. to the parents' care.

DISCUSSION

Father concedes the evidence was sufficient to sustain jurisdiction under section 300, subdivision (b)(1). He solely argues the same evidence was insufficient to sustain jurisdiction under section 300, subdivision (a) because that provision required some showing of physical injury to E.W.² Because jurisdiction and any potential consequence stemming from exercising jurisdiction would remain even if we agreed with him, we can grant him no effective relief.

“It is a fundamental principle of appellate practice that an appeal will not be entertained unless it presents a justiciable issue. [Citation.] The justification for this doctrine, which in general terms requires an appeal to concern a present, concrete, and genuine dispute as to which the court can grant effective relief, is well explained by Wright and Miller’s hornbook of federal practice: ‘The central perception is that courts should not

² Section 300, subdivision (a) allows a court to exercise jurisdiction over a child 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, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm. 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.”

render decisions absent a genuine need to resolve a real dispute. Unnecessary decisions dissipate judicial energies better conserved for litigants who have a real need for official assistance.’ ” (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1489-1490.) “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.” (*Id.* at p. 1490.) “When the court cannot grant *effective* relief to the parties to an appeal, the appeal must be dismissed.” (*Ibid.*)

“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 Alexis E.* (2009) 171 Cal.App.4th 438, 451; see *In re Ashley B.* (2011) 202 Cal.App.4th 968, 979.)

Father urges us to exercise our discretion to consider the merits of his appeal because the finding pursuant to section 300, subdivision (a) could have adverse consequences in future dependency and other proceedings. (See, e.g., *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.) Father cites two future consequences, but neither persuades us to exercise our discretion to address his contention.³

³ We decline to follow *In re D.P.* (2015) 237 Cal.App.4th 911, cited by father. In that case, the court exercised its discretion to address a challenge limited to allegations pursuant to section 300, subdivision (c) but not identical allegations pursuant to

First, father speculates that DCFS pled the allegations under both section 300, subdivision (a) and subdivision (b)(1) “to make the parents’ conduct appear more egregious, and consequently, more deserving of juvenile court intervention.” Father suggests this tactic could unnecessarily extend the case and might prompt service providers to report insufficient progress to address intentional abuse. We fail to see the logic in this inference, given DCFS pled the identical allegations under both subdivisions. In any case, the parents’ case plans ordered DCFS to provide therapists with the sustained petition and reports, so the parents’ service providers can make their own determinations about the parents’ needs based on the facts found by the court.

Second, father contends the sustained finding under Welfare and Institutions Code section 300, subdivision (a) can subject him to the risk of appearing in California’s Child Abuse Central Index (CACI) (Pen. Code, § 11170, subd. (a)) pursuant to the Child Abuse and Neglect Reporting Act (CANRA) (Pen. Code, § 11164 et seq.). The true finding under Welfare and Institutions Code section 300, subdivision (a) does not *automatically* trigger inclusion in the CACI. Instead, reporting is based on substantiated findings of “‘child abuse or neglect,’ ” defined in pertinent part as “physical injury or death inflicted by other than accidental means upon a child by another person.” (Pen. Code,

other subdivisions. While the court noted “the section 300, subdivision (c) allegation could potentially affect future dependency proceedings,” it failed to cite any *specific* future proceeding that could have been affected. (*D.P., supra*, at p. 917 [citing *In re D.C.* (2011) 195 Cal.App.4th 1010, 1015, which also contained no analysis].)

§ 11165.6.) That includes “ ‘the willful harming or injuring of a child or the endangering of the person or health of a child,’ ” meaning “a situation in which any person willfully causes or permits any child to suffer, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation in which his or her person or health is endangered.” (Pen. Code, § 11165.3.) If a report of abuse is deemed substantiated by a reporting agency, the agency forwards a report to the Department of Justice for inclusion in the CACI and notifies the suspected abuser he or she has been reported to the CACI. (*In re C.F.* (2011) 198 Cal.App.4th 454, 462-463; see Pen. Code, § 11170, subd. (a).)

Father does not provide evidence he has *actually* been reported to the CACI. Even if he has, he would not be removed if we reversed the section 300, subdivision (a) findings. He argues his reporting is more likely for sustained physical abuse allegations under section 300, subdivision (a) than neglect allegations under section 300, subdivision (b). Whether or not that is true generally, the fact remains that the juvenile court sustained the same factual allegations under both subdivisions. The risk that father’s conduct renders him eligible for inclusion in the CACI is the same even if we reversed the section 300, subdivision (a) finding. Because our decision would not alter any future consequence for him under the CANRA, we can grant him no effective relief.

DISPOSITION

The appeal is dismissed.

HALL, J.*

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.

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