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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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

B246910

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. CK96790)

Plaintiff and Respondent,

v.

MONICA R.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. D. Zeke Zeidler, Judge. Affirmed.

Anne E. Fragasso, under appointment by the Court of Appeal, for Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel,  
Jessica S. Mitchell, Senior Associate County Counsel, Attorneys for Respondent.

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Monica R. (Mother) appeals from the juvenile court's jurisdictional finding that her daughters are children described by Welfare and Institutions Code section 300, subdivisions (a) and (b).<sup>1</sup> We affirm the juvenile court's order.

### **FACTS**

Mother and Julio A. (Father) are the parents of Desiree A. (born 2006), D. A. (born 2010) and Diamond A. (born 2012). On December 2, 2012, Father picked Mother and the children up after their visit with Mother's family in Los Angeles. Mother and Father began to argue in the car on the way home to Bakersfield, resulting in Mother pouring a soda on Father. Father then punched Mother in the face. The children were in the backseat. Father followed Mother out of the car to slap her and try to push her back into the car. A driver noticed the altercation and began to honk in an attempt to get Father to stop.

Police officers responding to a call about the incident noted that Mother was standing outside the car and Father was sitting inside when they arrived. However, Mother was blocked from leaving by the car. When the officers tried to question Father, he yelled, "fuck you" and sped off with the children inside. The officers pursued Father at speeds up to 100 miles per hour. Father abandoned the car with the three children inside after he crashed it in a Bank of America parking lot. The children were not fastened into their car seats and Desiree was holding a bag of marijuana when the police found them. An officer who interviewed Mother at the scene smelled alcohol on her breath.

Desiree confirmed the events leading to the high speed chase to a caseworker later that day. She reported there was blood running down Mother's face after Father hit her. She also stated Father crashed the car and handed her some "smokes." She immediately corrected herself, describing it as a "blunt" instead. Desiree, however, stated her sisters were in a car seat and she had a seat belt on during the pursuit and crash. She denied that

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<sup>1</sup> All further section references are to the Welfare and Institutions Code unless otherwise specified.

Father had hit Mother before, but looked towards the ground immediately afterwards. The children were detained in separate foster homes by the Los Angeles County Department of Child and Family Services (Department).

An interview with the maternal grandmother, Bertha Rodriguez, revealed that a family friend had reported to her that Mother had a bruise on her face caused by Father while she was pregnant with Diamond and that Father constantly hit Mother. Mother's sister was unaware whether Mother was being assaulted by Father but stated that Mother is a good mother.

During its investigation of the family, the Department discovered a previous 2009 referral against Mother for neglect of Desiree. Mother's in home service provider reported that Mother slept all day as a result of having too much alcohol and did not feed Desiree. Mother opted for voluntary services to avoid Desiree being detained. The Department also discovered that Mother and Father were both on probation. Mother had an extensive criminal history dating from 2006, which included convictions for possession of marijuana for sale and receiving stolen property. The Department concluded in its detention report that there was a "very high" risk for future abuse and/or neglect. It recommended continued detention and placement of the children for their safety.

At the detention hearing on December 5, 2012, the juvenile court found a prima facie case had been made under section 300, subdivisions (a) and (b). The juvenile court ordered the children to be detained in shelter care but allowed the Department discretion to place the children with any appropriate relative. Family reunification services were ordered as well as individual and domestic violence counseling and random drug testing for Mother and Father. The children were placed with the maternal aunt, who later reported that Mother visited the children four times at her home and the visits went well.

Mother admitted that she and Father had problems: he told her to "shut up" and called her "stupid." She reported her arguments with Father were often about his other children. She stated their arguments were "never . . . physical like this before.

Yes . . . he put his hands on me and it should have never happened and especially never

in front of the kids. My nose is bleeding. He had pulled over and parked the car. He hit me and I got out. He got out to try to get me come back in the car and I was pushing him away. We have had arguments before. He never hit me when I was pregnant.”

Father was arrested for one count of domestic violence. Father was reported to be incarcerated on the charges resulting from the incident and was scheduled to be released on February 18, 2013. The Department’s dependency investigator interviewed Father in jail on January 15, 2013. Father denied any previous domestic violence. He stated, “Nothing like this happened before. We have been together for 13 years. We never got into that before. I never put them in jeopardy.” The Department concluded that Mother was unable and incapable of protecting the children given her history of domestic violence with Father. Despite that, she continued to return to him.

A jurisdictional hearing was conducted on January 16, 2013. The court admitted the Department’s reports into evidence and heard testimony from Mother. When asked what kind of classes she felt Father needed to take, she testified that counseling or classes “would help to be better parents, but that [Father] needs some, [because] he’s violent, no.” Mother also admitted she had not yet begun domestic violence classes herself.

The juvenile court sustained an amended petition under section 300, subdivisions (a) and (b) on the ground that Mother and Father had a history of engaging in violent altercations in the presence of the children, including the incident on December 2, 2012. The juvenile court explained, “I have read and considered the evidence, listened to and considered the testimony. It’s of real concern that we have at least one incident resulting in [Father] physically striking the mother on the face, causing a bloody nose, and the mother doesn’t think that there’s enough of a problem, that he has any anger issues or needs any type of counseling or classes . . . [¶] . . . Oh, not to mention the mother’s credibility is sorely lacking in light of her not even thinking that there’s really a problem here with, at least, this one incident. I have no reason to question the credibility of the friends who have . . . told the grandmother about the various times that they’ve seen bruising on the mother.” The juvenile court declared the children dependents of the court

and then ordered the matter transferred to Kern County where Mother lives.<sup>2</sup> Mother filed a notice of appeal on January 22, 2013.

### DISCUSSION

On appeal, Mother contends the juvenile court made multiple errors in reaching its jurisdictional findings.<sup>3</sup> Mother first argues the court failed to apply the proper standard – a preponderance of the evidence. Mother relies on the juvenile court’s remarks from the bench, which failed to identify which standard it used. The minute order issued by the juvenile court, however, expressly stated the Department “has met its burden by a preponderance of the evidence . . .” It is clear from the record that the juvenile court applied the preponderance of the evidence standard in reaching its decision.

Mother next takes issues with the juvenile court’s finding that Mother had a history of violent altercations with Father. Mother concedes it is undisputed that Father hit Mother and fled from the police on December 2. However, Mother and Desiree both told social workers that this was the only time Father had ever hit Mother. As a result, Mother contends there was no evidence that the children suffered or are at substantial risk of suffering “serious physical harm inflicted nonaccidentally” under subdivision (a) or that they suffered or are at substantial risk of suffering “serious physical harm or illness, as a result of the failure or inability of his or her parent or guardians to adequately supervise or protect” them under subdivision (b).

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<sup>2</sup> Although the matter is now pending in Kern County, our decision is binding on that juvenile court. (*In re Lisa E.* (1986) 188 Cal.App.3d 399.)

<sup>3</sup> Mother also challenges the juvenile court’s order removing the children from her custody. The Department filed a motion for partial dismissal of the appeal because the Kern County juvenile court ordered the children to be returned to Mother on July 17, 2013. We previously granted the Department’s request for judicial notice of the Kern County juvenile court orders. The Department argues the Kern County court’s order renders this part of the appeal moot. We agree and dismiss that portion of Mother’s appeal as moot. (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404 [“An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief.”]; *In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315-1316.)

Mother relies on cases which hold that isolated instances of domestic violence do not support jurisdiction over a minor. (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717 [Father pulled Mother's hair and choked her once years prior to the petition]; *In re Alysha S.* (1996) 51 Cal.App.4th 393, 398 [Father touched the child's privates once in a manner Mother felt was inappropriate]; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 [caretaker kicked child in the ribs once but no indication child would ever be left with caretaker again].) None of these cases are applicable because, in each of those cases, there was no indication that any other instances of violence had occurred or that the abuse would persist. That is not the case here.

Physical violence between a child's parents may support the exercise of jurisdiction under section 300, subdivisions (a) and (b) but only if there is evidence that the violence is ongoing or likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm. (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598-599; *In re Janet T.* (2001) 93 Cal.App.4th 377, 391.) Here, the record contains evidence that Father has hit Mother before. The children's grandmother reported that a family friend told her Mother had a bruise on her face while she was pregnant with Diamond and that Father hit Mother all the time. The Department's report also indicated that Desiree may not have been telling the truth when she denied any previous abuse between her parents. The grandmother further stated that Mother had separated from Father before as a result of arguments but always returned to him. Mother acknowledged she and Father argued about his relationship with his other children.

More importantly, the incident on December 2 demonstrated that Father was violent and reckless. He hit Mother multiple times, causing her nose to bleed, while the children watched. Desiree also told the dependency investigator that Father almost ran Mother over. The officers responding to the incident noted that Mother was blocked by Father in the car. When the officers attempted to interview Father, he led them on a high speed chase with the children in the back seat. He then abandoned them with a bag of marijuana after he crashed the car. It is obvious that Father has dangerous unaddressed anger management issues, which Mother fails to recognize. At the hearing, Mother

testified that she did not feel that Father needed classes because she did not believe he was violent. Mother apparently remains attached to Father and denies his culpability. Thus, substantial evidence supports a finding that the violence is likely to continue and that it places the children at risk of harm under section 300, subdivisions (a) and (b).

**DISPOSITION**

The juvenile court's order is affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

FLIER, J.