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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re J.H., a Person Coming  
Under the Juvenile Court Law.

B286785

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

(Los Angeles County  
Super. Ct. No. DK23870A)

Plaintiff and Respondent,

v.

P.H.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Nichelle L. Blackwell, Juvenile Court Referee. Reversed in part and remanded with directions.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

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P.H. (father) challenges the juvenile court's order exercising jurisdiction over his son J.H. (born November 2016). The juvenile court sustained identical factual allegations of physical harm to J.H. and domestic violence in J.H.'s presence against both mother and father under Welfare and Institutions Code<sup>1</sup> section 300, subdivisions (a) and (b)(1). It also concluded the inquiry and notice requirements of the Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C. § 1901 et seq.) did not apply.

On appeal, father contends the jurisdictional findings involving physical harm to J.H. under section 300, subdivision (a) should be vacated because they were not supported by substantial evidence, but does not challenge the validity of the other jurisdictional findings made against him. He also argues the Los Angeles County of Children and Family Services (DCFS) failed to comply with the inquiry requirements of ICWA. DCFS concedes error under ICWA.

We decline to address and dismiss father's contentions contesting jurisdiction under section 300, subdivision (a) because we can grant father no effective relief. We remand the matter for the limited purpose of directing the juvenile court to conduct a full inquiry and provide proper notice under ICWA.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **1. The Dependency Petition/Jurisdictional and Disposition Hearing**

On July 12, 2017, DCFS filed a petition alleging the following ground for jurisdiction under section 300, subdivisions

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

(a) and (b)(1): “The child, [J.H.]’s mother, [L.V.], and the child’s father, [P.H.], have a history of engaging in violent altercations. In May 2017, during a verbal altercation, the father and the mother pulled the child’s car seat back and forth between them, while the child was in the car seat, in an attempt to grab the child from each other. On a prior occasion, the father pushed the mother, causing the mother’s glasses to break. On a prior occasion, the father choked the mother. On a prior occasion, the father pinned the mother against a wall. On prior occasions, the father slapped, pinched and pushed the mother. On prior occasions, the mother pushed the father. The mother failed to protect the child in that she allowed the father to reside in the child’s home and to have unlimited access to the child. Such violent conduct on the part of the father against the mother, and the mother’s failure to protect the child, endangers the child’s physical health and safety, and places the child at risk of serious physical harm, damage, danger and failure to protect.”

The jurisdiction/disposition report noted DCFS received a referral on May 14, 2017, alleging J.H. was a victim of neglect by mother and father. The referral stated parents were engaged in a verbal dispute, and when mother attempted to leave, father got into the car to prevent mother from leaving. The parents got into a “tug-of-war” over the car seat with J.H. sitting inside, then approximately six months old. Father obtained possession of J.H. and went to a nearby liquor store. He then left J.H. with an unknown tenant in the apartment complex. Maternal aunt, P.V., witnessed the events and called the police. Father was arrested on the scene due to an unrelated warrant.

Following the incident, mother admitted to DCFS that father had put his hands on her that day but would not go into detail. Father explained to DCFS that the incident was only a verbal altercation that started because mother assumed father

was cheating on her. He admitted a struggle ensued over the car seat with J.H. inside. Father stated he then took J.H. into the apartment complex but denied leaving him with a stranger. He also denied any incidents of domestic violence, but admitted he pinned mother against a wall one time.

Both father's and mother's relatives who were interviewed by DCFS expressed concerns of domestic violence in the couple's relationship. Maternal aunt, S.K., stated mother admitted to her that father had physically harmed her. Mother also admitted father had banged her head causing her glasses to break, and father had choked her when she refused to give her cell phone to him. S.K. also observed bruises on mother in the past, but mother stated the bruises were due to bug bites. Maternal aunt, P.V., stated mother told her father had pinched her, pushed her, slapped her, and once caused her glasses to break. Paternal grandmother, T.C., stated she witnessed father push his body against mother during a verbal argument. She also stated at times father would not allow mother to leave the home alone. When father and mother verbally argued, father had accused mother of cheating, and had called mother vulgar names such as "whore."

During subsequent correspondence between DCFS and mother and father, they denied any incidents of domestic violence.

At the jurisdictional hearing, the juvenile court sustained the petition's allegations under section 300, subdivisions (a) and (b)(1). The court noted both parents admitted to the tug-of-war over J.H., which it concluded was "entirely inappropriate conduct for a baby." It also found credible mother's initial statements that father had put his hands on her, as well as the statements made by relatives regarding incidents of domestic violence.

The juvenile court declared J.H. a dependent child of the court, removed him from parental custody, and ordered family reunification services for both parents.

## **2. ICWA Findings**

On July 12, 2017, father filed a parental notification of Indian status indicating he may have Indian ancestry with the Ohlone tribe through his paternal grandfather. Father provided contact information for his paternal grandfather. Mother denied any Indian ancestry.

At the hearing on the section 300 petition, the juvenile court ordered DCFS to contact father's paternal grandfather to determine whether he had any Indian heritage with a federally recognized tribe.

DCFS met with father, who stated he believed his father's side had Indian ancestry, but he did not have any additional information about his relatives who were associated with the tribe. DCFS also researched the Ohlone tribe and determined it was not a federally recognized tribe. DCFS did not contact father's paternal grandfather.

At the jurisdictional hearing, the juvenile court reviewed DCFS's report and determined there was no reason to know that J.H. was an Indian child who would qualify for status with a federally recognized tribe. The court therefore concluded ICWA did not apply.

## **DISCUSSION**

### **1. Father's Challenge to the Juvenile Court's Jurisdictional Findings Does Not Raise a Justiciable Issue**

Father contends the struggle over J.H. in his car seat with mother was insufficient to establish jurisdiction under section 300, subdivision (a). Because jurisdiction would remain even if we agreed with father, we decline to exercise our discretion to

address the sufficiency of evidence and dismiss this portion of father's appeal.

“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 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.*, italics added.)

“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.)

Here, because father did not challenge the jurisdictional findings involving the same evidence under section 300, subdivision (b)(1), the issues underlying the domestic violence incidents between mother and him, and mother has not appealed,

the juvenile court would still retain jurisdiction over J.H. Thus, even if we accepted father's contentions, we can grant father no effective relief.

Anticipating this problem, father requests that we exercise our discretion and reach the merits of his challenge because of the prejudice he will suffer from having a sustained dependency finding against him. (*In re D.C.* (2011) 195 Cal.App.4th 1010, 1015.) Father cites two future consequences, but neither persuade us to exercise our discretion to address his contention.

First, father suggests a finding that he physically abused J.H. nonaccidentally may negatively affect his ability to preserve his parental relationship by way of reunification services. We disagree. The flaw with this argument is that the court's order requiring father to participate in support counseling is tied to the still-valid jurisdictional findings based on the same evidence under section 300, subdivision (b)(1).

Second, father contends a true finding under section 300, subdivision (a) may result in him being placed on the Child Abuse Central Index (CACI) (Pen. Code, § 11170) pursuant to the Child Abuse and Neglect Reporting Act (Pen. Code, § 11164 et seq.), which might prevent him from finding a job or volunteering at J.H.'s school. Once again, whether or not this is true, the fact remains that the juvenile court sustained the same factual allegations under both subdivisions under section 300. Thus, the risk that father's conduct renders him eligible for inclusion in CACI is the same even if we reversed the section 300, subdivision (a) finding against him.

Accordingly, because our decision would not alter any future consequences for father, we decline to exercise our discretion and dismiss this portion of father's appeal.

## **2. Remand Is Necessary for the Juvenile Court to Comply with ICWA**

We agree with the parties that this case must be remanded for the limited purpose of requiring the juvenile court to order DCFS to conduct further inquiry of any family member who might reasonably have knowledge of J.H.'s Indian ancestry.

Under ICWA, "where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe . . . of the pending proceedings and of their right of intervention." (25 U.S.C. § 1912(a).) Once notice is triggered, the tribe must be alerted to a wide range of information about the child's relatives, including information about grandparents and great-grandparents to enable the tribe to correctly identify the child. (*In re J.D.* (2010) 189 Cal.App.4th 118, 124.)

To that end, California requires DCFS to make a further inquiry into the child's Indian status, including interviewing the parents and extended family members, contacting the Bureau of Indian Affairs and the California Department of Social Services to identify the names and contact information of the tribes of which the child may be a member, and contacting the tribes or any other person who reasonably can be expected to have information regarding the child's membership status or eligibility. (Cal. Rules of Court, rule 5.481(a)(4).)

"Any violation of this policy requires the appellate court to vacate the offending order and remand the matter for further proceedings consistent with ICWA requirements." (*In re J.D.*, *supra*, 189 Cal.App.4th at p. 124.)

Here, DCFS had the information to contact father's paternal grandfather regarding J.H.'s Indian ancestry, but failed



to do so. Because DCFC's inquiry efforts were deficient under ICWA, we remand the matter to the juvenile court with directions to comply with ICWA, including interviewing father's relatives about their Indian ancestry, if any.

**DISPOSITION**

We remand the matter to the juvenile court with directions to order DCFS to conduct a full inquiry under ICWA. If it is determined J.H. is an Indian child, father may petition the juvenile court to invalidate any orders that violated ICWA.

ROGAN, J.\*

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.

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