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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re LEONARDO D.,

a Person Coming Under the
Juvenile Court Law.

B286154

(Los Angeles County
Super. Ct. No. DK20840)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

DANIEL D.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Rudolph A. Diaz, Judge. Modified and affirmed.

Weissburg Law Firm and Diane B. Weissburg for
Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Tracey Dodds, Principal Deputy County Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

Daniel D. (Father) appeals from the juvenile court's jurisdiction and removal orders, contending the petition failed to state a cause of action and there is insufficient evidence to support the sustained allegations related to sexual grooming. We conclude that Father has forfeited his claim that the sexual grooming allegation does not state a cause of action under Welfare and Institutions Code¹ section 300, subdivision (b)(1). We exercise our discretion to consider Father's claim of insufficient evidence concerning the grooming allegation and modify the allegation to strike the references to sexual grooming.²

We affirm the juvenile court's orders as modified.

FACTUAL SUMMARY

Father and Z.K. (Mother) are the parents of Leonardo, born in 2013. In mid-May 2016, the family moved from San Francisco to Los Angeles for Father's work. On May 25, 2016, law

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

² Father does not challenge the court's jurisdictional finding based on the domestic violence allegations.

enforcement responded to the family's home to investigate a domestic battery allegation. The police report indicates the incident occurred after Father came home from work at about 11:30 p.m. Both parents agreed Father was in the parents' bedroom lying on the bed when Mother walked into the room carrying Leonardo. According to Father, Mother dropped Leonardo on Father; according to Mother, the child jumped onto Father. According to Father, he stood up and Mother hit him in the face. He then slapped her twice. According to Mother, Father slapped her six times. Mother called the police. Police arrested Father for domestic battery.

The incident brought the family to the attention of the Los Angeles County Department of Children and Family Services (DCFS). On May 26, 2016, a DCFS emergency response social worker went to the family home and spoke with Mother. Mother told the social worker Leonardo jumped onto Father and Father then slapped Mother six times. Mother said this was the first time Father had hit her. Mother acknowledged she had been arrested six years earlier for domestic violence.

On May 27, 2016, the emergency social worker spoke with Father, who said he was concerned about Mother being an alcoholic and bulimic; he claimed she became verbally abusive when intoxicated. Father gave a different account of the May 25 incident to the social worker: he said Mother dropped Leonardo on him deliberately, but Father simply took the child and put him to sleep. Thereafter, the parents resumed their argument. Father admitted hitting Mother repeatedly, and said Mother hit him as well. The social worker recommended the parents participate in various services to address domestic violence issues and that Mother continue her weekly therapy. Mother continued

her individual therapy to address bulimia and issues in the home. Father participated in individual therapy to address issues in the home.

In August 2016, DCFS children's social worker (CSW) Channel Rainey visited the family home. Mother and Leonardo were in the home. Mother was cooperative and discussed her ongoing therapy. She denied any history of substance abuse. CSW Rainey observed Leonardo to be properly dressed, well groomed and well bonded with Mother. CSW Rainey did not observe any marks or bruises on the child.

In September 2016, Father's therapist Shannon Byrnes contacted CSW Rainey and stated that the family needed further services. The therapist also expressed her belief that the relationship between Mother and Father was toxic and harmful to Leonardo. In October 2016, Byrnes told CSW Rainey she had received a disturbing email from Father describing a domestic violence incident which had taken place in front of the child.

In November 2016, Father emailed CSW Rainey directly and stated Mother had physically attacked him in Leonardo's presence. The paternal grandmother also emailed the social worker and stated Mother was intoxicated and behaved inappropriately at Leonardo's birthday party. The grandmother also stated Mother had threatened Father with a knife on two occasions. Later in the month, the paternal grandmother sent emails claiming Mother was giving Leonardo an unknown substance to make him sleepy.

In late November 2016, CSW Rainey met with Father and Mother. Mother denied physically hitting Father. Both Father and Mother agreed they should separate, but needed help to do so. The CSW told the parents the court might get involved due to

the ongoing domestic violence. In mid-December 2016, Father went to the police station to report an incident which he said had occurred six weeks earlier, during which Mother had scratched him on the wrists. According to Father, Leonardo was present when that occurred.

On December 22, 2016, Mother was met by Father and his attorneys when she returned to the family apartment after a grocery shopping trip. One of the attorneys handed Mother a restraining order and told Mother that she had to take her personal belongings and leave the apartment. The order had been obtained in family law court. Mother called the police, who came to the apartment and helped her gather her belongings. They explained that Mother would have to go to court to change the order. The next day, Mother discovered Father had removed her from the family credit card accounts and had taken all the money out of their bank accounts.

On December 27, 2016, DCFS filed a petition pursuant to section 300 alleging Leonardo needed the protection of the juvenile court. The petition alleged pursuant to section 300, subdivision (a), that there was a substantial risk Leonardo would suffer “serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian.” The petition also alleged pursuant to section 300, subdivision (b), that there was a substantial risk Leonardo would suffer “serious physical harm or illness [¶] as a result of the failure or inability of his or her parent or legal guardian to supervise or protect the child adequately.” Both allegations contain the same statement of supporting facts: Mother and Father have a history of engaging in “violent altercations” with each other, including incidents on May 26, 2016, in October 2016, and on November 6, 2016 which

endanger the child.³ The court detained Leonardo from Mother and released him to Father on the condition that the paternal grandmother reside in the home. The court granted Mother monitored visitation. The juvenile court stayed proceedings in the family law court and ordered the file transferred to the juvenile court for a hearing on Father's restraining order.

On January 20, 2017, DCFS filed its Jurisdiction/Disposition Report. The report stated that Father admitted giving Mother "an attention slap." It also reported that Mother stated Father did not have appropriate boundaries around Leonardo, and Father walked around naked, kissed Leonardo on the mouth and slept naked with Leonardo.⁴ DCFS recommended that Leonardo be declared a dependent of the juvenile court and that he remain in the home of Father. DCFS also recommended that Father receive family maintenance services and Mother receive reunification services; that Mother attend classes for domestic violence victims and Father attend

³ The petition alleged: "On 5/26/16, the mother struck the father's face in the presence of the child. The father repeatedly slapped the mother's face. In October 2016 the mother kicked the father's face, in the presence of the child. The mother twisted the father's arm and fingers, inflicting scratches. On 11/06/16, the parents engaged in a violent altercation, causing the father to sustain scratches. On a prior occasion, the mother struck the father and broke a vase. Such violent conduct on the part of the parents endangers the child's physical health and safety, and places the child at risk of serious physical harm, damage and danger."

⁴ The CSW noted Mother referred to Father as being "naked" in a photo which instead shows he was wearing shorts.

classes for domestic violence perpetrators; and that Mother complete eight random drug and alcohol tests.

On February 24, 2017, DCFS reported Father's behavior was negatively affecting Mother's visitation with Leonardo. As a result, DCFS recommended that Leonardo be placed in the home of Mother. DCFS described Mother as cooperative and reported she had been testing negative for controlled substances. The juvenile court found that DCFS had made a prima facie case for removing Leonardo from Father, and set a *Dennis H.*⁵ hearing at Father's request.

On March 2, 2017, following testimony from Father and the paternal grandmother, the juvenile court ordered Leonardo released into the care of both Father and Mother; custody of the child was to change on a weekly basis.

On March 7, 2017, DCFS requested a warrant to remove Leonardo from Father's custody due to alleged sexual abuse by Father. Mother reported Father locked the door when he was in the bathroom with Leonardo. On one occasion, Father would not unlock the door; Mother called police. When the police responded, they told Father not to lock the door. Mother also reported Father kissed Leonardo on the mouth, laid Leonardo's head in Father's lap and slept "naked" with Leonardo. On March 14, 2017, the juvenile court ordered Leonardo detained in shelter care but "release[d] to mother on a visit."

⁵ *In re Dennis H.* (1971) 19 Cal.App.3d 350 [upon request, a court is required to hold a hearing and require the prosecution to show a strong suspicion that alleged acts occurred and that the minor should be detained; prosecution must produce its witnesses for cross-examination].

On March 17, 2017, DCFS filed an amended petition, now with allegations pursuant to section 300, subdivisions (a), (b)(1), (c), and (d). The new allegations related to Mother's descriptions of Father's inappropriate sexual behaviors, including videotaping Leonardo nude; the petition now alleged Leonardo was at risk of harm due to sexual abuse by Father. Supporting factual statements b-2, c-1 and d-1 all alleged in pertinent part: "On an ongoing basis since May 2016, the child [Leonardo's] father . . . sexually abused the child. Such sexual abuse consisted of known sexual abuse grooming techniques including but not limited to acclimating the child to be nude, sleeping nude with the child, exposing his penis to the child, and kissing the child on the lips. The mother . . . failed to take action to protect the child . . ."⁶ Supporting factual statement b-3 alleged that the child "was video recorded and the videos were uploaded to public websites." Supporting factual statement d-2 alleged that the parents engaged in "video recording the child in the nude and uploading the images to public websites." Supporting factual statement c-2 allegations similarly referred to videos of a naked Leonardo which were uploaded to the Internet.

DCFS also filed a Last Minute Information with the court with an attached police report. The report contained a description of YouTube videos viewed by police through a link sent to police by the paternal grandmother. The video at the link showed Leonardo playing naked in the bathtub. Police also viewed videos in a subfolder entitled "Leoanddad." According to their description, one of the videos had an icon showing a nude

⁶ Factual statement b-2 was later amended with interlineation as detailed in footnote 8, *post*.

child in a standing position; the video itself showed Leonardo nude in the living room with Father. Another video showed a shirtless Father laying on a bed and holding Leonardo (hereafter the “bed video”). The video appeared to be self-recorded by Father. Initially, the video shows Father “caressing” Leonardo’s back over the boy’s shirt. Father asks Leonardo “if he wants to ‘Play with Daddy.’” The camera angle then shifts to show more of Leonardo and less of Father. This new angle reveals that Leonardo is nude from the waist down. The video shows Father caressing Leonardo’s back past the bottom of his shirt and slightly over the child’s buttocks. The report states the police subsequently interviewed Mother who reported that Father displayed “unusual persistence to have [Leonardo] engage in various activities in the nude.” Mother provided police with a thumb drive containing videos which she believed showed sexually inappropriate behavior. The police report does not describe those videos.

On April 4, 2017, DCFS filed a Last Minute Information with recommendations for the Mandatory Settlement Conference in which DCFS indicated it was willing to drop the allegations made pursuant to section 300, subdivisions (a), (c) and (d) if Father agreed to participate in domestic violence counseling, sexual abuse awareness counseling, and individual counseling. DCFS requested that the court sustain the allegations made pursuant to subdivision (b)(1). Mother and Father each submitted a Waiver of Rights form and indicated an intent to plead no contest.

On April 4, 2017, Mother pled no contest to the amended petition but Father did not. By April 10, 2017, the date set for the Jurisdiction/Disposition hearing, Father had decided he

would not plead no contest. His attorney represented that Father was not entering a plea because DCFS had put Father in the “[Child Abuse Central Index] as a sex offender.”

On May 18, 2017, DCFS filed an addendum report indicating Mother had completed a parenting course and participated in a domestic violence counseling course. Father participated in therapy with Dr. Jeffrey Arden, a clinical and forensic psychologist. Dr. Arden’s report, which was attached to the DCFS addendum, indicated the doctor had treated “dozens of pedophiles and sex offenders who were released from state hospital into community reentry programs” and did not see “any evidence in [Father] to suggest any indicia of pedophilia, child abuse or child sexual abuse perpetrated by [Father].”

On May 18, 2017, trial on the jurisdictional issues began, ultimately concluding on June 26, 2017. DCFS called CSW Maria Pacheco as the first witness. CSW Pacheco became involved in the case to investigate the new allegations of sexual abuse. She was qualified as an expert on child sexual abuse. CSW Pacheco had also received training and worked in the area of human trafficking, including child pornography on the Internet. In March 2017, CSW Pacheco investigated a referral for sexual abuse of Leonardo. As part of that investigation, CSW Pacheco spoke with Mother, who expressed concerns about Father’s behavior with Leonardo, specifically that Leonardo was “always” nude in Father’s presence. Mother stated that whenever she left the house, Leonardo was clothed, but when “she would return, the child was nude.” CSW Pacheco opined that Leonardo was at risk of sexual abuse by Father due to Leonardo “being nude,” the posting of nude photos and videos of Leonardo on the Internet and “the totality of [her] investigation.”

DCFS dependency investigator Judith Cohen also testified. Cohen had also investigated the sexual abuse allegations involving Leonardo. Cohen spoke with police about their investigation of the videos; she also viewed several videos in which Leonardo was nude. Cohen spoke with Mother about Leonardo's nudity. Mother told her she was "uncomfortable with the child consistently being nude when he's with the father."

Cohen testified she had received training on grooming as part of her sexual abuse training. Cohen described grooming as the "systemic behavior of an adult . . . in normalizing behaviors for the purpose of having the child perform certain activities." Her specific training discussed how grooming ends up in sexual abuse. Based on her training and experience, she characterized Father's behavior with Leonardo as grooming. Cohen explained that the difference between rubbing a child's back to console the child and rubbing the child's back to sexually groom the child was "the context." In this case, the nudity and skin-to-skin contact involved gave the back rubbing a sexual context.

Los Angeles Police Department (LAPD) Officer Rafael Ortega provided testimony about the May 26, 2016 incident that brought the family to the attention of DCFS. He was one of the responding officers. Father then stated that Mother had intentionally dropped Leonardo on him; Father stood up and Mother struck him. Father admitted that he then slapped Mother multiple times. Officer Ortega determined that Father was the primary aggressor and arrested him.

Mother was DCFS's last witness. She stated Leonardo was potty trained by December 2015, when he was about two years old. Mother testified she observed what she believed to be inappropriate behavior by Father with Leonardo. Specifically,

Father and Leonardo would both be naked behind closed doors in the bedroom or bathroom. She also testified Father would touch Leonardo's penis, "caress [Leonardo's] naked buttocks" and "embrace him while he was naked."

Mother also described physical violence by Father toward her. She repeated her account of the May 26, 2016 slapping incident. She also testified that two other incidents occurred, in August 2016 and December 2016. Father hit her in the face and caused injuries to her legs. She provided photographs of her injuries. Mother also testified that Father threatened to take Leonardo to Canada so that Mother would never see Leonardo again; Father also threatened to have Mother deported to Russia.

Following the completion of Mother's testimony, DCFS filed a Last Minute Information for the Court for the June 13, 2017 hearing. The information stated that LAPD Sergeant Shannon Geaney, a member of the LAPD's Internet Crimes Against Children Unit, had reviewed the videos in this case and found nothing that met the requirements of child pornography. According to the sergeant, none of the videos was criminal. Based on her expertise, she opined that no sexual exploitation was apparent.

On June 13, 2017, Father made a motion pursuant to section 350, subdivision (c) to dismiss the petition for insufficient evidence. On June 15, 2017, the juvenile court found that DCFS had met its burden of proof for factual statements a-1, b-1 and b-3. The juvenile court also found DCFS met its burden on factual statement b-2 involving sexual grooming as to Father; the court amended statement b-2 to strike its allegation as to Mother. The court dismissed allegations c-1, c-2, d-1 and d-2, leaving no

remaining factual statements to support the subdivision (c) and (d) allegations.

Father testified and again admitted he had slapped Mother during the May 2016 incident. He denied injuring Mother on other occasions, maintaining she injured herself.

Father admitted kissing Leonardo on the lips hundreds of times, and also kissing other parts of Leonardo's body if Leonardo said the area hurt. He denied any sexual motivation. He never kissed Leonardo on his genitals. Father acknowledged touching Leonardo's penis many times as part of caring for the child. Father testified Leonardo attempted to touch Father's penis on two occasions, when Father was using the toilet, but Leonardo did not succeed. Father agreed that he slept in the same bed as Leonardo hundreds of times, and that sometimes Leonardo was not clothed because Leonardo was hot.

Father acknowledged Leonardo was frequently without diapers or other bottoms but claimed this was because Mother took off Leonardo's clothes. According to Father, Mother said it was normal in Russia for children to be naked until they were five years old because it prevented diaper rash. Father also claimed Mother wanted Leonardo to not wear diapers or other bottoms for potty training. Father testified he did not like Leonardo's nakedness, but he did not want to have a major fight with Mother about it. Father denied walking around the house naked himself; he testified he always wore at least a pair of shorts at home.

When asked if he posted videos of himself and Leonardo nude on YouTube, Father agreed that he had. He explained that it was a private account which he created to share photos and videos with his family members who lived in Canada and

Southeast Asia. He sent his family members a link with a security key in it so they could view the private videos. When asked, “Did you ever send anyone else a private link?” Father replied, “Yes.” When asked to whom he had sent it, he replied, “I’m not sure. I believe my mother sent a private link to [Leonardo’s attorney Valles].”

With regard to the “bed video” in which Leonardo was laying on Father’s naked chest, Father testified Leonardo was upset and Father was comforting him. Father stated he filmed the encounter because Leonardo had just had a tantrum with Father, and Mother took a video of that incident and berated him for being a bad parent; Father wanted to show that Leonardo returned to him after the tantrum.

Father called psychologist Alfredo Crespo as a witness. Dr. Crespo had no specific formal training in identifying and treating child sexual predators. He had “recently . . . done a few assessments of alleged perpetrators.” Dr. Crespo did not believe there were “any standard tests used to [diagnose] or assess a propensity for sexual abuse of children by adults.”⁷

Dr. Crespo’s previous experience as an expert in juvenile court was extensive, but it involved family evaluations in situations in which the court had already sustained allegations of sexual abuse. Typically, Dr. Crespo offered dispositional recommendations. He had never rendered an opinion in juvenile court regarding whether sex abuse had occurred against a child. The juvenile court ruled, “I’m going to allow him to testify, but *not* as an expert.” (*Italics added.*)

⁷ Thus, Dr. Crespo did not use any such tests to evaluate Father.

Although Dr. Crespo had read only one article about sexual grooming, the trial court permitted Dr. Crespo to testify that he understood “sex[ual] . . . grooming techniques” to be “a term . . . to describe the way a sexual abuse perpetrator works to victimize a child.” Grooming involves “behaviors [that are] described that are sexual in nature for the perpetrator[s] but are innocent to those in the situation, including mother of the eventual victim.” The court also permitted the doctor to testify that he had not seen “anything that suggested to me this was clear sexual grooming going on. There’s no reason to suspect this was a sexual charge atmosphere or gratification being derived by the father.” Dr. Crespo also testified he had only read about sexual grooming in the context of discussions about pedophiles, not in incest cases. He stated that the “gist” of the article he read was: “There’s grooming behaviors carried out by pedophiles.” When asked if he had seen any evidence that Father was a pedophile, Dr. Crespo responded by stating that it was his “belief there’s no profile for sex offenders in the first place.”

Following Dr. Crespo’s testimony, the court heard closing arguments of the parties. The court then ruled on the petition. The court struck the subdivision (a) allegation. The court sustained the subdivision (b)(1) allegations as pled in factual statements b-1 and b-3 and as amended in factual statement b-2. The court read the amended statement into the record as follows: “[O]n an ongoing basis since May 2016, the child [Leonardo’s] father . . . engaged in inappropriate sexual behavior with the child. Such inappropriate sexual behavior consisting of sexual abuse, grooming techniques including, but not limited to, acclimating the child to be nude, sleeping nude with the child, exposing his penis to the child, kissing the child excessively on

the lips, placing the child nude with his penis on the father's chest. Court finds such . . . inappropriate sexual behavior on the part of the [child's] father endangers the child's physical and emotional health and safety and places the child at risk of physical and emotional harm or damage and further inappropriate sexual behavior.”⁸

The court specifically stated that father's “potty training argument really is not convincing.” More generally, the court had earlier noted during Father's testimony that Father “won't answer questions and that's the problem.”

DCFS's dispositional report recommended that Leonardo remain in the care of Mother with family maintenance services. DCFS reported that Father perceived he was being unjustly accused and that the allegations were lies.

On July 25, 2017, the juvenile court held a dispositional hearing and adjudged Leonardo a dependent of the court pursuant to section 300, subdivision (b)(1), and ordered Leonardo to remain in Mother's care. The court removed Leonardo from Father's physical custody and ordered reunification services. The court ordered Father to complete a 52-week domestic violence counseling program, sexual abuse awareness counseling and

⁸ The minute order for the hearing states that the petition is amended as shown by interlineation. The interlineations are almost identical to the court's oral statement. The petition uses the modifier “known” before the phrase “sexual abuse grooming techniques.” It also refers to a risk of “continued inappropriate sexual behavior” rather than “further sexual abuse.”

Leonardo's counsel later read a version of the sustained allegations into the record which used the phrase “inappropriate sexual boundaries.” The significance of this reading is not clear from the record.

individual counseling to address case issues. The court ordered Mother to complete domestic violence counseling for victims and individual counseling to address case issues, and to submit to 10 random drug tests.

The court characterized Father as lacking “[i]nsight and responsibility” concerning the nude videotaping and stated, “I don’t think Father is fully accepting responsibility either of domestic violence.” The court also described Father as demonstrating “passive-aggressive behavior” to provoke Mother and as having a “domineering personality.” The court ordered Father’s three weekly visits with Leonardo to continue but also ordered Father to comply with existing restraining orders.

Father filed a timely Notice of Appeal on August 1, 2017.

At the oral argument on this appeal, counsel for Father requested that we take judicial notice of juvenile court documents showing that jurisdiction for Leonardo was terminated on July 10, 2018. No other party objected. Accordingly, we take judicial notice of the termination of jurisdiction in this matter. (Evid. Code, §§ 452, subd. (d), 453.)

DISCUSSION

When jurisdiction is terminated in a dependency matter while the matter is on appeal, the appeal may become moot. However, a dismissal for mootness is not automatic; we must consider each appeal on a case-by-case basis. (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.)

Termination of jurisdiction does not render an appeal moot if the appellant would suffer future unfair consequences as a result of the underlying order. (*In re Daisy H.* (2011) 192

Cal.App.4th 713, 716; see, e.g., *In re Cristian I.* (2014) 224 Cal.App.4th 1088, 1096, fn. 6 [disposition order continued to adversely affect the mother because child placed with the father]; *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548 [continuing case in family court could be affected]; *In re A.R.* (2009) 170 Cal.App.4th 733, 740 [the father's contact continued to be restricted].)

Father contends the juvenile court's errors in sustaining the section 300, subdivision (b)(1) allegations concerning sexual abuse grooming could adversely affect him in ongoing family law proceedings and in any future dependency proceedings. As we explain in more detail below, there is some ambiguity in the court's amendment of factual statement b-2 supporting subdivision (b)(1) and so we will consider Father's claims on appeal.

A. *Failure to State a Claim*

Father first asserts that the sexual grooming allegations do not state a cause of action under section 300, subdivision (b)(1). Father has forfeited this claim by failing to raise it in the trial court.

As a general rule, a pleading challenge to a dependency petition may not be raised for the first time on appeal. (*In re Christopher C.* (2010) 182 Cal.App.4th 73, 82-83; but see *In re Alysha S.* (1996) 51 Cal.App.4th 393, 397 [allowing parent to raise facial challenge for the first time on appeal].) “Given that lay social workers are usually lumbered with the task of writing petitions, they must be given a certain amount of slack. If the parent believes that the petition does not “adequately communicate” [DCFS's] concerns or is otherwise misleading, the

onus is on the parent to challenge the petition at the pleading stage.’ [Citation.]” (*In re S.O.* (2002) 103 Cal.App.4th 453, 459-460 [rejecting *Alysha S.* and explaining that cases following the general rule represent the “better view”].)

Relying on *In re Quentin H.* (2014) 230 Cal.App.4th 608, Father urges us to exercise our discretion and consider his claim because the outcome could be the difference between his “being an ‘offending’ parent versus a ‘non-offending’ parent.” We decline Father’s request. Even if the sexual grooming allegations were stricken, Father would still be an “offending” parent: He does not contest in any way the other sustained allegations against him.

Further, Father has failed to support his claim with argument or legal authorities on appeal. These omissions make the case particularly unsuitable for an exercise of discretion. “[A]n appellant must supply the reviewing court with some cogent argument supported by legal analysis and citation to the record.” (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 286-287.) He “is required to not only cite to valid legal authority, but also explain how it applies in his case.” (*Hodjat v. State Farm Mutual Automobile Ins. Co.* (2012) 211 Cal.App.4th 1, 10.) “[W]e may disregard conclusory arguments that are not supported by pertinent legal authority or fail to disclose the reasoning by which the appellant reached the conclusions he wants us to adopt.” (*City of Santa Maria, supra*, at p. 287.)

B. *Sufficiency of the Evidence*

Father also contends there is insufficient evidence to support the sexual grooming allegations. Since father does not challenge the juvenile court’s jurisdictional findings based on domestic violence, we need not consider whether the sexual

grooming allegations are supported by substantial evidence. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) However, we exercise our discretion to consider his claim for the reasons stated in our discussion of mootness.

Section 300 jurisdictional determinations are governed by the preponderance of the evidence as the standard of proof. (§ 355, subd. (a).) We review a juvenile court’s jurisdictional finding to determine whether substantial evidence supports the court’s conclusion. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) “We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence, or determine where the weight of the evidence lies. Instead, we draw all reasonable inferences in support of the findings, view the record in the light most favorable to the juvenile court’s order and affirm the order even if there is other evidence supporting a contrary finding. [Citations.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the order. [Citations.]” (*In re A.M.* (2010) 187 Cal.App.4th 1380, 1387-1388.)⁹

⁹ We note that in making his argument of insufficient evidence, Father relies on cases involving presumptions of parental unfitness; such a presumption has no further effect if the parent introduces any contrary evidence. (See, e.g., *Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 222 Cal.App.4th 149, 152 [§ 355.1, subd. (d), presumption] (*LACDCFS*); *In re Heather B.* (1992) 9 Cal.App.4th 535 [§ 366.21, subd. (f), presumption].) There was no such presumption involved in this matter. DCFS produced affirmative evidence of Father’s inappropriate sexual behavior. Father’s production of some contrary evidence did not negate DCFS’s evidence as a matter of law. It was the juvenile court’s right and

Although Father characterizes his claim as a sufficiency of the evidence claim, he is primarily contending that as a matter of law sexual grooming can never occur between a parent and a child, and also that sexual grooming can never involve a child as young as two or three years old. Father is mistaken. The primary case cited by Father to define sexual grooming in fact involved an assessment that there was a risk the father would sexually groom his three-year-old biological son. (*LACDCFS, supra*, 222 Cal.App.4th at pp. 155, 158.)¹⁰

Turning to the evidence presented in this case, there is substantial evidence to support a finding that Father engaged in known sexual abuse grooming behavior. DCFS presented the testimony of dependency investigator Cohen, who had received “a lot” of specialized training in grooming and who had investigated cases of sexual abuse of children where “there most likely was grooming.”¹¹ Cohen testified that “[g]rooming is a systemic

responsibility to pass on the credibility of witnesses, resolve conflicts in the evidence, and determine where the weight of the evidence lay. (*In re A.M., supra*, 187 Cal.App.4th at pp. 1387-1388.)

¹⁰ The Court of Appeal in that case stated that “[s]exual grooming consists of planning and deliberate behaviors to befriend and establish an emotional connection with a child to have the child lower and abandon whatever inhibitions the child might have against inappropriate sexual activities.” (*LACDCFS, supra*, 222 Cal.App.4th at p. 158.) The case involved a presumption under section 355.1 and so there was no evidence of any specific sexual grooming behavior.

¹¹ In fact, Cohen also testified that she had investigated cases of sexual abuse of children as young as two years old where “there most likely was grooming.”

behavior of an adult in this situation in normalizing behaviors for the purpose of having the child perform certain activities.”

Cohen characterized Father’s behavior with Leonardo as grooming. In Cohen’s opinion, grooming did involve a sexual “context” such as nudity and/or skin-to-skin contact. She viewed that context as present in this case.

It appears, however, that the juvenile court, in considering the evidence as a whole, found that Father had no present intent to sexually abuse Leonardo. As we discuss above, the court dismissed the section 300, subdivision (d) allegations which specifically involved sexual abuse, and amended factual statement b-2 to replace “sexually abused” with “inappropriate sexual behavior.” These actions indicate the juvenile court did not fully accept Cohen’s testimony, that is, the court did not find that Father was engaging in the specified activities with the goal of sexually abusing Leonardo. Nevertheless, the juvenile court left the reference to sexual abuse grooming techniques in the sustained factual statement b-2. As reflected in the written petition, the allegation reads “known sexual abuse grooming techniques.”

Viewed as a whole, we understand the court’s actions and statements to indicate that the court found some of Father’s behavior to correspond to activities known to be used by pedophiles to prepare their young victims for sexual abuse, although the court did not find Father himself had such a purpose. The court found that even without such a purpose, Father’s inappropriate sexual behavior could and did endanger Leonardo’s physical and emotional health and safety and placed Leonardo at risk of future physical and emotional harm or

damage, and of continued inappropriate sexual behavior by Father.

The juvenile court could reasonably infer that Father's acts of acclimating Leonardo to be nude, exposing his penis to Leonardo, and initiating extended skin to skin contact of Leonardo's penis with Father's bare chest would tend to "normalize" these behaviors for the child. At a minimum, Father's behaviors create the risk that Leonardo will engage in these sexually inappropriate behaviors himself and suffer the attendant consequences. We agree with respondent that the court could infer that this normalization would also make Leonardo more vulnerable to pedophiles in the future, particularly if Father continued his behavior as Leonardo aged. As both Cohen's testimony and the common definition of sexual grooming in the *LACDCFS* case show, sexual grooming is goal-oriented. Since the trial court found that Father did not have the present goal of sexually abusing Leonardo, we construe the sustained allegation as follows: "On an ongoing basis since May 2016, the child [Leonardo's] father . . . engaged in inappropriate sexual behavior with the child, including but not limited to acclimating the child to be nude, sleeping nude with the child, exposing his penis to the child, excessive kissing of the child on the lips, and placing the child's nude body and penis on the father's chest. Such behavior on the part of the child's father endangers the child's physical and emotional health and safety and places the child at risk of emotional harm or damages and continued inappropriate sexual behavior."

As so modified, there is substantial evidence to support the juvenile court's orders, and we affirm them.

DISPOSITION

The juvenile court's orders are affirmed as modified by this opinion.

GOODMAN, J.*

We concur:

BIGELOW, P. J.

RUBIN, J.

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