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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re DAVID I. et al., Persons Coming  
Under the Juvenile Court Law.

B268409  
(Los Angeles County  
Super. Ct. No. DK11959)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

RICHARD I.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Stephen Marpet, Commissioner. Dismissed.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, and Jacklyn K. Louie, Principal Deputy County Counsel, for Plaintiff and Respondent.

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Richard I. (Father), the father of two children David I. (born in 2008) and Dannielle I. (born in 2014), appeals from an order which sustained a dependency petition (Welf. & Inst. Code<sup>1</sup>, § 300, subds. (a), (b)), adjudged the children dependents of the court, placed the children with Father under a home of parent order, and issued a restraining order against Dora V. (Mother). Father limits his appeal to seeking reversal of the jurisdictional findings that concern his conduct and does not challenge the validity of the jurisdictional findings based on Mother's conduct or the disposition. Because Father's contentions, even if meritorious, would not require reversal of the order or the grant of other effective relief, we dismiss the appeal.

### **BACKGROUND**

Father and Mother (who is not a party to this appeal) are the parents of the two children. At the time that these 2015 juvenile court proceedings began, the children had initially resided with Father and Mother; however, from June 20 to June 21, 2015 Mother was on a section 5150 involuntary psychiatric hold at Henry Mayo Medical Center and on June 22, 2015 Father applied for and obtained a temporary restraining order against Mother (protecting Father and the children) which included a "[m]ove-[o]ut [o]rder."<sup>2</sup>

On June 25, 2015, the Los Angeles Department of Children and Family Services (DCFS) filed a dependency petition under section 300, subdivisions (a) and (b), to declare the two children dependents of the court.

Section 300 provides for juvenile court jurisdiction over any child who comes within its 10 subdivisions (each subdivision describes one or more means of assuming dependency jurisdiction). Subdivision (a) of section 300 provides: "The 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."

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

<sup>2</sup> The move-out order states: "You must take only personal clothing and belongings needed until the hearing and move out immediately from [the home address]."

Subdivision (b)(1) of section 300 provides: “The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or legal guardian to adequately supervise or protect the child, . . . the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse.”

Count a-1, as amended by the court, of the section 300 petition alleged: “On prior occasions, . . . [Mother] and [Father] engaged in violent altercations in that the mother attempted to run the father over with the mother’s vehicle. The mother threatened to kill the father and the child David. On a prior occasion, the father pushed the mother. The father failed to protect the children in that the father allowed the mother to reside in the children’s home and have unlimited access to the children. The parents’ violent conduct endangers the children’s physical health and safety and places the children at risk of serious physical harm, damage and failure to protect.”

Count b-1 of the section 300 petition alleged: “[Mother] had mental and emotional problems including homicidal and suicidal ideations which render the mother incapable of providing the children with regular care and supervision. On 06/20/15 and 06/21/15, the mother was involuntarily hospitalized for the evaluation and treatment for the mother’s psychiatric condition. The mother’s mental and emotional problems endanger the children’s physical health and safety and place the children at risk of serious physical harm and damage.”

Count b-2 of the section 300 petition repeated verbatim the allegations, as amended, in count a-1 of the section 300 petition.

Also on June 25, 2015, the juvenile court held a detention hearing and ordered that the children be detained from Mother and released to Father.<sup>3</sup> The juvenile court specified in its minute order: “The court will make detention findings against the mother.” (Capitalization omitted.) The court issued a temporary restraining order against Mother to protect the children and Father with an exception for DCFS-monitored visitation with the children “at least twice a week for 2 hours in duration.” (Capitalization omitted.) The order precluded Mother from visiting the children at Father’s “family home” (capitalization omitted) and precluded Father from monitoring Mother’s visitations with the children.

At a combined jurisdictional and dispositional hearing on August 31, 2015,<sup>4</sup> the juvenile court sustained the petition, as amended, pursuant to section 300, subdivisions (a) and (b), and issued a dispositional case plan. The court considered several DCFS reports dated June 25, 2015, July 28, 2015, and August 31, 2015.<sup>5</sup> The

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<sup>3</sup> At a detention hearing, the juvenile court determines whether a prima facie showing has been made that the child comes within section 300, whether continuance in the parent’s home is contrary to the child’s welfare, and whether certain other circumstances exist. (§ 319, subd. (b).)

<sup>4</sup> At a jurisdiction hearing, the juvenile court determines whether the minor comes within one or more of the 10 grounds of jurisdiction described in section 300. (§ 355, subd. (a).) If the court finds that the minor is not a person described in section 300, it must dismiss the petition; if it finds that the minor is such a person, it must “make and enter [the jurisdictional] findings and order,” sustain the petition, and proceed to a disposition hearing. (§§ 356, 358.) At the disposition hearing, the juvenile court determines the proper disposition of the child. (§ 358.) For example, the court may dismiss the petition, adjudicate the child to be a dependent child of the court, or appoint a legal guardian for the child. (§§ 360, 390.)

<sup>5</sup> The June 25, 2015 detention report noted that the family had multiple prior referrals since July 2013. DCFS had concluded that all allegations were “[u]nfounded” or “[i]nconclusive” except that December 23, 2014 “[a]llegations of general neglect were substantiated as Father left bullets unlocked within easy access to minor David who had said bullets for two week[s] before father realized they were gone. Father rectified the situation and placed the bullets in a safe. The relation between mother and father is volatile[.]” The report also noted that Father’s arrest record revealed several arrests and

reports included interview summaries with Father, Mother, the children, the maternal grandfather, and friends of the parents.

In the subsequent minute order, as to jurisdiction, the juvenile court specified that it sustained the petition, as amended, pursuant to section 300, subdivisions (a) and (b). As to the disposition, the juvenile court specified in its minute order: “The court will make placement findings against the mother.” (Capitalization omitted.) The court ordered the children to be placed in the home of Father under DCFS supervision and, at the request of Father, issued a three-year restraining order against Mother to protect Father and the children.<sup>6</sup> The court also ordered that DCFS provide family maintenance services to Father and enhancement services to Mother and set a progress hearing on November 30, 2015. The court ordered, inter alia, Father to participate in individual counseling, including on the issue of domestic abuse, and Mother to participate in individual counseling, including on the issues of parenting and domestic abuse, and Mother to undergo a mental health assessment and psychiatric evaluation. The court also ordered monitored visitation with the children for Mother “at least twice a week for 2 hours in duration” (capitalization omitted) and that the visitation “not . . . occur at the Father’s home” (capitalization omitted) and Father “is not allowed to monitor” (capitalization omitted) the visitation. The court set a judicial review hearing for February 29, 2016.

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citations from 1995 to 2008 including inflicting corporal injury on a spouse or cohabitant and battery on a spouse, ex-spouse, or “date.” The July 28, 2015 DCFS report contained similar information.

<sup>6</sup> The minute order reflects that the court removed custody of the children from Mother; however, the reporter’s transcript reflects that the court removed custody of the children from Father. Although the reporter’s transcript generally prevails when in conflict with the clerk’s transcript (minute order), the rule is not a mechanical one and must depend upon the circumstances of each particular case. (*People v. Smith* (1983) 33 Cal.3d 596, 599.) Here, the remainder of the record supports, and the parties do not dispute, that the juvenile court placed the children in the home of Father and removed custody of the children from Mother.

Father timely appealed; Mother did not appeal. Father filed an opening brief; DCFS filed a respondent's brief; but Father did not file a reply brief.

### DISCUSSION

"It is a fundamental principle of appellate practice that an appeal will not be entertained unless it presents a justiciable issue." (*In re I.A.* (2011) 201 Cal.App.4th 1484,1489 (*I.A.*)). An appeal must concern a present, concrete, and genuine dispute as to which the court can grant effective relief. (*Ibid.*) A court generally only considers and determines an actual, existing controversy and not a moot, speculative, or abstract question. (*Id.* at p. 1490.) A key requirement for justiciability is whether effective relief is available, that is, a remedy having a practical, tangible impact on the parties' conduct or legal status. (*Ibid.*) When a court cannot grant such effective relief to the parties to an appeal, it dismisses the appeal. (*Ibid.*)

An appeal from a dispositional order permits a party to challenge both the juvenile court's jurisdictional findings and the subsequent disposition. (*Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1754.)

Here, Father identifies no error by the juvenile court in its disposition. Rather, Father challenges the juvenile court's jurisdictional findings that concern his conduct. Because Father has not appealed the jurisdictional findings that involve Mother's conduct, we leave those findings undisturbed. Thus, Father correctly concedes that the juvenile court's exercise of jurisdiction over the children can be sustained based solely on its findings in regard to Mother's conduct. As explained below, Father's appeal therefore presents no genuine challenge to the juvenile court's assumption of dependency jurisdiction and, as a result, any order we enter will have no practical impact on the pending dependency proceeding, thereby precluding a grant of effective relief; for that reason, we conclude Father's appeal to be nonjusticiable and must be dismissed.

It is well-established that because the juvenile court's primary concern is the protection of children, a jurisdictional finding based on the conduct of one parent is sufficient regardless of the conduct of the other parent. "It is commonly said that the juvenile court takes jurisdiction over children, not parents." (*I.A.*, *supra*, 201 Cal.App.4th

at p. 1491.) Thus, once the juvenile court finds that a child comes within the descriptions set forth in section 300, the child is subject to the court's jurisdiction. (*Id.* at pp. 1491–1492.) “For jurisdictional purposes, it is irrelevant which parent created those circumstances.” (*Id.* at p. 1492.) Further, once dependency jurisdiction has been established, a jurisdictional finding that involves the conduct of a particular parent is not a prerequisite for the juvenile court to enter orders binding on that parent. (*Ibid.*)

Because a jurisdictional finding that involves one parent is sufficient, the appellate court usually declines “to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence.” (*I.A.*, *supra*, 201 Cal.App.4th at p. 1492.) Here, any decision we may render in favor of Father would not result in a reversal of the court's order asserting jurisdiction. The juvenile court would still be entitled to assert jurisdiction on the basis of the unchallenged allegations based on Mother's conduct. Because we cannot provide any effective relief to Father that would have a practical, tangible impact on his position in the juvenile dependency proceeding, his appeal only raises abstract, moot questions. Even if we agreed with Father that there was insufficient evidentiary support for the jurisdictional findings based on his conduct, we would not reverse the juvenile court's jurisdictional and dispositional order.

We have identified an exception to this general rule; we may exercise our discretion and reach the merits of a challenge to a jurisdictional finding when the finding: “(1) serves as the basis for dispositional orders that are also challenged on appeal [citations]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) ‘could have other consequences for [the appellant], beyond jurisdiction.’” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763.) As discussed below, the grounds for exercising discretionary review are not present here: Father does not oppose the court's disposition and, apart from general speculation, he has not specified how the findings may prejudice him in the future.

First, Father argues there could be an impact in future juvenile dependency proceedings because “a favorable outcome would mean the difference between Father

being an offending versus a non-offending parent” (citing *In re Drake M.*, *supra*, 211 Cal.App.4th 754) and the juvenile court “will measure Father’s progress in his services by the history and evidence it found to be true at the time of the jurisdictional hearing.”

However, the juvenile court’s disposition in this case places custody of the children with Father over Mother without regard to his status as the “offending” or “nonoffending” parent. Father’s conclusory reliance on the possibility that he may be characterized as offending, without any further explanation, is not persuasive. The determination of justiciability is discretionary and turns on the facts of each individual case—which the proponent (here, Father) has the burden to persuade with substantive legal argument and citation to the record (which he failed to do). Although the fact that a custodial parent is nonoffending can be a factor in whether the juvenile court decides to remove a child from that parent (§ 361, subd. (c)(1)),<sup>7</sup> the juvenile court here decided *not* to remove the child from Father and Father has not specified any other way in which it could matter that he could be characterized as nonoffending rather than offending.

General allegations that the jurisdictional findings could impact future court orders are insufficient; the parent must identify specific legal or practical consequences that arise from the dependency findings. (*I.A.*, *supra*, 201 Cal.App.4th at p. 1493.) The

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<sup>7</sup> The “nonoffending parent” in section 361 refers to a custodial parent who is not the perpetrator of any child abuse or neglect. (*In re Nickolas T.* (2013) 217 Cal.App.4th 1492, 1505.) Section 361 provides that before the removal of a dependent child from the physical custody of his or her parents with whom the child resides at the time of the initiation of the section 300 petition, the juvenile court must find clear and convincing evidence of, for example, a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the parent’s physical custody. Two factors that the court can consider to determine if there are any such reasonable means are “removing an offending parent or guardian from the home” or “[a]llowing a nonoffending parent or guardian to retain physical custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm.” (§ 361, subds. (c)(1)(A), (c)(1)(B).)



record here does not suggest any such consequences. Father does not challenge the disposition or any order that resulted from the jurisdictional finding that adversely affected him. The dispositional order places the children with Father, removes custody from Mother, and issues a restraining order against Mother. We see nothing other than speculation that the jurisdictional findings will have any adverse effect on Father in further proceedings.

Second, Father argues there could be an impact in a future family law proceeding because “[it] is unknown whether the ‘status quo’ will be maintained and Father will eventually obtain sole physical custody of the minors” and “it is also unknown whether the case will ultimately conclude with Mother’s visitation and/or custody being further expanded.” He also argues that “in the event of an adverse exit order, Father will be in the position of having to satisfy this stringent [changed circumstances] criteria prior to any changes being made in custody and/or visitation” and he “would not be able to relitigate the juvenile court’s conclusive jurisdictional findings.”

Father’s argument is not persuasive because the jurisdictional findings do not place Mother in a superior position to Father in a custody dispute between the parents. (See *In re Michael W.* (1997) 54 Cal.App.4th 190, 195 [family court determines best interests of child “as between two parents”].)

Moreover, the juvenile court retained jurisdiction and ordered the matter to be continued with a schedule for subsequent hearings and a supplemental report. The dispositional order on review was *not* an exit order that terminated the juvenile court’s jurisdiction; thus, this is not a scenario where the juvenile court issued continuing custody and visitation orders enforceable in family court that a party would be collaterally estopped from relitigating. (Cf. *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547–1548.) Any “unknown[s]” raised by Father that concern a future exit order that has not yet occurred were purely speculative. (See *I.A.*, *supra*, 201 Cal.App.4th at p. 1495 [“prospect of an impact on a family law proceeding is even more speculative”].)

In sum, nothing in Father’s briefs would require reversal of the juvenile court’s jurisdictional findings as to Mother; even if arguably we could vacate the juvenile court’s

implicit finding in regards to Father's conduct, vacating that finding would have neither legal nor practical consequence. The dispositional order leaves the children in Father's custody—which the juvenile court could have done based solely on the jurisdictional findings against Mother. Because we see no prejudice to Father from the jurisdictional findings, we decline to exercise our discretion to review it.

**DISPOSITION**

The appeal is dismissed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.