Filed 7/25/18 In re Y.D. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Y.D., a Person Coming Under the Juvenile Court Law.	B286972 (Los Angeles County Super. Ct. No. DK23351)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. Y.D., Defendant and Appellant.	

Appeal from an order of the Superior Court of Los Angeles County, Nichelle L. Blackwell, Commissioner. Dismissed.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Sarah Vesecky, Senior Deputy County Counsel, for Plaintiff and Respondent.

Y.D. (father) appeals from an August 14, 2017 order of the juvenile court, declaring his son, Y.D., a dependent child under Welfare and Institutions Code section 300, subdivisions (a) and (b)(1), and ordering monitored visitation.[1] Father contends substantial evidence does not support the court's finding under section 300, subdivision (a), that his son faced a risk of serious physical harm based on a history of violent altercations between father and mother.[2] He also contends the order for monitored visitation was an abuse of discretion.

The Los Angeles County Department of Children and Family Services (Department) contends father's appeal of the jurisdictional finding is not justiciable because he challenges only the juvenile court's jurisdiction finding under section 300, subdivision (a), and not the finding under subdivision (b). The Department also contends father's appeal of the jurisdictional finding and monitored visitation

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[1] Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] Mother is not a party to this appeal.

order is moot because the court has since terminated jurisdiction over the matter and entered a custody order granting father unmonitored visitation. Because we cannot grant father any effective relief, we dismiss the appeal.

Factual and procedural history

On June 19, 2017, the Department filed a petition alleging that mother and father have a history of engaging in violent altercations, and that violent conduct by father against mother and mother's failure to protect Y.D. placed Y.D. at risk of serious physical harm. The petition contained identical allegations under section 300, subdivisions (a) and (b), and described two incidents. In the most recent, father choked mother with the mother's shirt, causing mother difficulty in breathing. On a prior occasion, father grabbed mother and sat on her, causing difficulty breathing.

At the jurisdiction and disposition hearing on August 14, 2017, mother pleaded no contest to an amended allegation under subdivision (b) that she was unable to protect the child from the risk of harm. Father opposed jurisdiction, arguing that inconsistencies in mother's story and the fact that mother had previously threatened to call law enforcement when father tried to take the child demonstrated there was no basis for jurisdiction. Father also argued that if the court were to find jurisdiction, services should be more narrowly tailored to the circumstances, and that father should not be required to

complete a 52-week domestic violence class.

The court sustained allegations as amended to reflect mother's plea, and ordered the child to be removed from father's custody. The court ordered father to complete reunification services, and gave him monitored visits with the child. Father appealed. While father's appeal was pending, the dependency court terminated jurisdiction on February 9, 2018, awarding mother sole physical custody of Y.D. and granting father unmonitored visitation.

Father's appeal of a single jurisdictional finding is not justiciable

"'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 [trial] 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.)" (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762.) Setting aside for a moment the fact that the court has terminated jurisdiction while the current appeal was pending, even if we were to agree with father that substantial evidence does not support the juvenile court's finding under section 300, subdivision (a), the juvenile court would still have jurisdiction based on its

finding under section 300, subdivision (b), which father does not challenge. Therefore, the question of whether the subdivision (a) finding is supported by substantial evidence raises only an abstract or academic question, and we lack the power to render any practical, tangible relief. (See *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491–1492 [finding appeal nonjusticiable where father did not challenge all of the juvenile court's jurisdiction findings]; see also *In re N.S.* (2016) 245 Cal.App.4th 53, 60 ["the critical factor in considering whether a dependency appeal is moot is whether the appellate court can provide any effective relief if it finds reversible error"]; *In re A.B.* (2014) 225 Cal.App.4th 1358, 1364 [an appeal is moot if the reviewing court cannot grant effective relief].)

Father's opening brief acknowledges this principle but argues we should exercise our discretion to reach the merits of his appeal based on *In re Drake M., supra*, 211 Cal.App.4th 754, and *In re D.C.* (2011) 195 Cal.App.4th 1010. Those cases stand for the proposition that while, as a general rule, a single jurisdictional finding supported by substantial evidence is sufficient to support jurisdiction and render nonjusticiable or moot a challenge to the other findings, a court of appeal may review the merits of a parent's appeal when a challenged jurisdiction finding "(1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (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 [citation].'" (*In re Drake M.*, *supra*, at pp. 762–763; accord, *In re D.C.*, *supra*, at p. 1015.)

Father argues the juvenile court's order sustaining count a–1 prejudices him because it "imputes a high degree of blameworthiness to the parent, furnishing a ground to 'bypass' family reunification, which in turn may furnish a presumptive ground to terminate parental rights." This argument fails because the statutory authority under which a court may deny reunification services to a parent looks to the factual basis for the prior adjudication, not the subdivision under which a count is sustained. (§ 361.5, subds. (b)(3) & (b)(6)(c) [authorizing bypass in certain circumstances where a child has been adjudicated a dependent "pursuant to any subdivision of section 300"].) Here, the court sustained the same factual allegations under subdivision (b), so to the extent father is arguing that the a–1 count creates a risk that a court will bypass reunification services in a future dependency proceeding, the same reasoning would apply to the b–1 count, which father has not appealed.

Father also argues he risks potential future harm based on the stigma of being labeled a child abuser and being included in the Child Abuse Central Index (CACI).[3]

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[3] The CACI is maintained by the California Department of Justice, which must disclose substantiated reports of child abuse and severe neglect to any law enforcement or other agency conducting a child abuse

Father acknowledges that the CACI provides access to the entire record of an agency's investigation, and he does not assert he would be disqualified from working in any current or future position as a result of the record's inclusion in the CACI or that he intends to become a foster or adoptive parent. We find father's argument about harm and stigma to be speculative under these facts.

Father's appeal is moot

"'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. [Citation.]' (*In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054.)" (*In re Anna S.* (2010) 180 Cal.App.4th 1489, 1498.)

Father argues on appeal that there is insufficient evidence to support the court's jurisdictional finding under section 300, subdivision (a), and that the court's dispositional order for monitored visits was an abuse of discretion. While

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investigation, as well as to certain agencies conducting background checks of applicants seeking employment involving contact with children. (Pen. Code, § 11170; see *Saraswati v. County of San Diego* (2011) 202 Cal.App.4th 917, 921, fn. 1 ["[t]he CACI consists of an index of all reports of child abuse and severe neglect submitted to the DOJ pursuant to the [Child Abuse and Neglect Reporting Act] under Penal Code section 11169"].)

father's appeal was pending, the juvenile court terminated jurisdiction over the matter, entering a custody order giving father unmonitored visitation. Because the juvenile court is no longer exercising jurisdiction and the order for monitored visitation is no longer in place, there is no effective relief this court can grant on appeal. Taking judicial notice of the minute orders entered on February 9, 2018 (Evid. Code, § 452, subd. (d)), we dismiss father's appeal as moot.

DISPOSITION

The appeal by Y.D. is dismissed.

MOOR, J.

We concur:

BAKER, Acting P.J. KIN, J.*

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