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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

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

B285697

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Los Angeles County  
Super. Ct. No. DK23387

Plaintiff and Respondent,

v.

A.G.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Marguerite Downing, Judge. Affirmed in part and reversed in part.

Janette Freeman Cochran, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Jeanette Cauble, Principal Deputy County Counsel, for Plaintiff and Respondent.

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A.G. (mother) appeals from the juvenile court's order finding jurisdiction over her son J.N. and removing him from her custody. We agree that the trial court's finding that mother had bipolar disorder is not supported by substantial evidence, as nothing in the record shows diagnosis, treatment, or prescribed medication for that mental illness. We reverse the court's finding of jurisdiction on that basis under Welfare and Institutions Code section 300, subdivision (b).<sup>1</sup> We otherwise affirm.

### **BACKGROUND**

1.     ***The petition***

The Los Angeles County Department of Children and Family Services (DCFS) filed a petition on June 21, 2017, alleging under section 300, subdivision (a) that mother and Paul N. (father) had a history of violent altercations in seven-month-old J.N.'s presence, and mother's violent conduct against father endangered J.N. These altercations included one on June 17, 2017, when mother repeatedly struck father's face and body while father held J.N., resulting in scratches and bruises to J.N.'s chin and body and scratches to father's neck and nose. In December 2016, mother repeatedly struck father's head and body in J.N.'s presence. Father and mother engaged in verbal and physical altercations on prior occasions, and mother had been arrested for spousal abuse on June 7, 2017.

The petition alleged under subdivision (b) that the history of violent altercations between mother and father was a failure to protect J.N.

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

A second allegation under subdivision (b) alleged mother “has mental and emotional problems including Bipolar Disorder and suicidal ideations which renders [*sic*] the mother unable to provide regular care and supervision for the child. The mother failed to obtain mental health services for the mother’s psychiatric condition. On a prior occasion, the mother was involuntarily hospitalized for the evaluation and treatment of her psychiatric condition.” Mother’s mental and emotional condition endangered J.N. and constituted a failure to protect.

Each of the allegations of violent altercations alleged father failed to protect J.N. by allowing the child to live with mother. The allegation in b-2 that mother had bipolar disorder alleged father failed to protect JN when he knew of mother’s “mental and emotional problems.”

A referral received on June 18, 2017 stated mother physically assaulted father in a car while he was holding J.N., and in hitting father, also struck and punched J.N, causing multiple scratches. A police officer reported that mother called 911 claiming father assaulted her. Law enforcement arrived at a restaurant parking lot but did not find mother and father. She called 911 again, and when police arrived a second time, they identified her, but she refused to talk to them.

An hour later, father filed a police report stating that mother assaulted him while he held J.N. Mother had tried to take J.N. out of his car seat when they stopped at a gas station after leaving the restaurant. Mother held J.N.’s head, and father held his legs; after mother let go, father was able to release the harness. While J.N. was in father’s arms in the car’s front seat, mother “snuck up on him” and punched father, in the process hitting J.N. Mother also inflicted injuries on herself. Father

called relatives and when they arrived they pulled mother to one side.

Father got an emergency protective order. J.N. was taken to the hospital. J.N. had scratches but was otherwise fine, and was released to father. Father intended to file for a restraining order. He and mother had an on and off “toxic” relationship for four years, and although he was not sure J.N. was his child, he had signed the birth certificate. J.N. stayed with him on the weekends (there was no family law order). Father also stated “mother had mental health concerns and was hospitalized for suicidal ideations prior to dating. . . . [M]other was bipolar, but was not receiving mental health services or psychotropic medications.” He admitted he and mother had physical fights. He had reported one incident in December 2016 when mother struck him in a hospital parking lot while he held a sleeping J.N. A DCFS referral had been closed as inconclusive.

At the detention hearing on June 21, the court found father was J.N.’s presumed father, and released J.N. to him (father lived with his brother, his father, and his stepmother and her teenage children), with monitored visits for mother. On June 30, the court reissued a June 19 temporary restraining order granted by another court, requiring that mother stay away from father and J.N. until the next hearing.

## **2. *The jurisdiction/disposition report***

The July 14, 2017 jurisdiction/disposition report stated that mother said she and father argued, but did not get violent. Father was hurtful and emotionally abusive. He pushed her when she was four months pregnant, and when she was five months pregnant, they argued in the car, and when she got out and walked in front of the car, father let go of the pedal and the

car tapped her. On June 17, she was arguing with father because he wouldn't let her take J.N. out of the car; she tried to pull J.N. out of the back seat and father pulled him to the front seat, socking mother and pushing her away. She fought to defend herself and father bit her. She also filed a police report afterwards, and the police arrested her because they thought she caused her own injuries. She spent three days in jail but the district attorney declined to prosecute. The arresting officer, however, stated in a supplemental police report that he arrested mother for domestic violence and felony child abuse.

Mother admitted she hit father once in December 2016. He reported her to the police, who arrested her and let her go three days later. Mother and father then broke up. J.N. lived with her and father agreed to visitation. Mother was happier on her own but they got back together shortly before the June 17 incident.

Mother said all the allegations of mental illness in b-2 were false. She experienced some post partum depression (with no diagnosis) after J.N.'s birth; she had trouble adjusting to being a mother. Before she became pregnant with J.N. mother had a miscarriage and was depressed afterwards. She denied a diagnosis of bipolar disorder, or any other mental health problem. She was not suicidal. Father was the one with mood swings; he used cocaine and drank heavily.

Father said mother " 'lays her hands on me a lot,' " gets mad over the smallest things, and "acts[ ] 'Bipolar.' " He said mother hit him three times in December 2016 while he held J.N. On June 17, 2017 mother flipped out on the way to a baby shower at a restaurant and was rude to his family at the party. After they left the party and stopped at the gas station, father tried to get J.N. out of his car seat, and to stop him, mother pulled J.N.

by the head. After father got J.N. into the front seat, mother punched father in the face and scratched his neck. Father bit her hand twice. Mother squeezed father's throat, and father bit mother's arm. Mother continued to hit and scratch father, and J.N. was hurt during the fight. Mother started to hit herself and screamed, " 'You're hitting me, you're hitting me.' " J.N. cried the entire time.

Father said mother's moods changed quickly and so he thought she was using drugs. He caught her cheating and she tried to cut herself. Mother told him she had been in a mental hospital. Her mood swings were worse when she was pregnant, and she had an earlier miscarriage at five months and became very depressed. Father "denied having any knowledge that mother had a diagnosis of Bipolar Disorder," but "her behavior and her statements lead him to believe that she was Bipolar." She had tried to kill herself by overdosing on Zofran. He provided copies of text messages in which mother claimed she had tried to kill herself. Father also told a police detective that mother was bipolar, took an unknown medication, and once had been institutionalized. While pregnant with J.N., she threw herself down two flights of stairs and tried to overdose on medication.

Medical records showed mother had soft tissue swelling over her forehead, and bite marks to her finger and arm, after the June 17 incident.

DCFS's assessment was that mother was the aggressor in physical altercations with father. She had a history of mental health problems including bipolar disorder and suicidal ideation, had failed to obtain mental health services, and had been involuntarily hospitalized. Mother denied these allegations, but

father had provided text messages he said were from mother. (Those undated messages included statements about feeling worthless and lifeless, and trying “many times” to end her life.) She had been depressed after a miscarriage and admitted depression due to her current situation. She repeated that father used drugs.

Attached to the report were mother’s prescription list and a letter from an urgent care doctor who had seen mother for the first time in May 2014 and several times thereafter, and “never had the impression that she is mentally ill or ha[s] any psychiatric illnesses.” A letter from one of the physicians who cared for mother during her pregnancy with J.N. stated she had no concerns about mother’s psychiatric health, and mother showed no symptoms of post partum depression. Her medical records showed no psychiatric issues although “it has been noted that she has had problems with the father of her baby during her pregnancy.”

3. ***The jurisdiction/disposition hearing***

At the jurisdiction/disposition hearing on July 25, 2017, mother’s counsel objected to the text messages as lacking dates or details, even as to parties, and therefore being without foundation. The court admitted the messages after DCFS counsel explained father provided them and said they were sent to him by mother. Father’s counsel asked the court to sustain all the allegations against mother, while striking father from the allegations.

Mother’s counsel argued that “there is nothing close to a preponderance of the evidence” to support the mental health allegations in b-2; the only information came from father, with no corroboration. Mother’s prescription lists and doctor letters all

indicated the absence of mental illness or related medication. The text messages were hard to read and were hearsay. His client acknowledged that the relationship with father was unhealthy. Counsel challenged the police report of the June 2017 incident, pointed out mother also had injuries, and requested the court amend the petition “to conform to what the court has before it, which is that this was more a mutual incident of domestic violence.” Counsel asked that J.N. be released to mother or at least that her visits be liberalized.

Counsel for DCFS argued that the text messages corroborated father’s allegations about mother’s mental health.

The court sustained all three allegations as amended to eliminate references to father’s failure to protect, declared J.N. a dependent, and removed J.N. from mother and placed him with father. Mother was given visitation to be monitored by someone other than father. The court issued a stay-away ordering mother not to go within 100 yards of father’s home. The court also ordered mother to undergo random drug tests, mental health counseling, and a psychiatric evaluation, take all psychotropic drugs, and attend a 52-week domestic violence program.

Mother filed this timely appeal.

## **DISCUSSION**

### **1. *The appeal is not moot***

Mother contends no substantial evidence supports the trial court’s finding of jurisdiction over J.N. and its removal of J.N. from her custody. We took judicial notice (at the request of DCFS) of orders showing that the juvenile court had terminated its jurisdiction over J.N. on March 28, 2018, while this appeal was pending, when mother and father signed and filed a custody order after mediation. (The orders do not include any details of



the mediated custody agreement.) DCFS argues Mother's appeal therefore is moot.

“Juvenile dependency appeals raise unique mootness concerns because the parties have multiple opportunities to appeal orders even as the proceedings in the juvenile court proceed.” (*In re N.S.* (2016) 245 Cal.App.4th 53, 59.) “As a general rule, an order terminating juvenile court jurisdiction renders an appeal from a previous order in the dependency proceedings moot. [Citation.] However, dismissal for mootness in such circumstances is not automatic, but ‘must be decided on a case-by-case basis.’ [Citations.] [¶] ‘An issue is not moot if the purported error infects the outcome of subsequent proceedings.’” (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.) We therefore must consider whether we “can provide any effective relief if [we] find[ ] reversible error.” (*In re N.S.*, at p. 60.)

When there is a subsequent custody order *in favor of the appealing parent*, the jurisdictional findings are not the basis of any current adverse order and the court cannot provide any effective relief. (*In re N.S.*, *supra*, 245 Cal.App.4th at p. 60.) Here, however, we have no information about the subsequent custody order in this case, other than it was reached through mediation and resulted in the termination of jurisdiction over J.N. As a result, we do not know whether the custody order is in mother's favor.

Mother contends the juvenile court's findings create a possibility of prejudice to her in subsequent family law or dependency proceedings, and dismissal of the appeal as moot would make meaningful review of the findings impossible. “[I]n an abundance of caution and because dismissal of the appeal operates as an affirmance of the underlying judgment or order

[citations], we consider the merits of her appeal.” (*In re C.C.*, *supra*, 172 Cal.App.4th at p. 1489; *In re E.T.* (2013) 217 Cal.App.4th 426, 436.)

**2. *Substantial evidence supports the allegations of violent altercations in J.N.’s presence***

We review the juvenile court’s findings of jurisdiction for substantial evidence, whether contradicted or uncontradicted, and view the record in the light most favorable to the court’s determination. (*In re D.C.* (2015) 243 Cal.App.4th 41, 51.)

The juvenile court found jurisdiction over J.N. on allegations under section 300, subdivisions (a) and (b), that mother engaged in violent altercations with father in J.N.’s presence. Mother’s brief states, “the record supports a finding that father and mother engaged in verbal and physical altercations,” essentially admitting the allegations are supported by substantial evidence. We agree. There is ample evidence that mother and father have a history of violent altercations in J.N.’s presence.

Mother also argues, however, that the trial court should have amended the allegations to conform to proof, to reflect that the domestic violence in J.N.’s presence was mutual. We disagree. Although mother disputed father’s accounts of the two violent altercations in J.N.’s presence, the evidence supports a conclusion that mother was the aggressor on those occasions. As sustained, the allegations state that mother and father “have a history of engaging in violent altercations in the child’s presence,” and that “[s]uch violent conduct on the part of the mother against the father” endangered J.N. The allegations as sustained were supported by substantial evidence.

Mother points out that the sustained allegations state: “On or about 06-7-17, the mother was arrested for Spousal Abuse;” but she was not arrested on that date. Mother did not raise this issue in the trial court. She was, however, arrested for domestic violence and felony child abuse after the June 17, 2017 violent altercation. On remand, we will order the trial court to correct the sentence in the sustained allegations to read, “On or about 06-17-17, the mother was arrested for Spousal Abuse.”

3. ***Substantial evidence does not support the allegation that mother had bipolar disorder***

The court also sustained the allegation that mother had bipolar disorder, was suicidal, had been hospitalized involuntarily, and had failed to obtain mental health services for her condition. Mother argues substantial evidence does not support this allegation, and we agree.

The allegation sustained under section 300, subdivision (b), states: “The child [J.N]’s mother, [A.G.] has mental and emotional problems including Bipolar Disorder and suicidal ideations which renders [sic] the mother unable to provide regular care and supervision for the child. The mother failed to obtain mental health services for the mother’s psychiatric condition. On a prior occasion, the mother was involuntarily hospitalized for the evaluation and treatment of her psychiatric condition. Such mental and emotional condition on the part of the mother endangers the child’s physical health and safety and places the child at risk of serious physical harm, damage and failure to protect.”

Evidence showed mother’s violent behavior toward father, but no evidence supported a conclusion that mother was diagnosed with bipolar disorder. Father stated he had no

knowledge that mother had been diagnosed with bipolar disorder. As no evidence shows she was diagnosed, no evidence showed she failed to seek treatment for that (or any other) psychiatric condition, or that she was “involuntarily hospitalized” for that psychiatric condition. Although the jurisdiction/disposition report contains a statement that father told a police officer that mother “had told [father] that she was once institutionalized” at a mental hospital, there is no evidence that father told the police officer that mother had been *involuntarily* committed to a mental hospital. Father’s belief that mother’s behavior meant she was “Bipolar” is certainly not evidence that mother was mentally ill. The only medical evidence was statements by mother’s physicians that mother did not show signs of any mental illness. Her prescription list did not show she had been prescribed psychotropic medication. As there is no evidence that mother suffered from bipolar disorder, the trial court erred in sustaining the allegation.

We recognize that the question of mootness again arises because we affirm the sustained allegations of violent altercations in J.N.’s presence, making the court’s exercise of jurisdiction over J.N. appropriate regardless of our reversal of the sustained allegation regarding bipolar disorder. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1431.) Nevertheless, the unsupported finding that mother had a serious mental illness and failed to seek treatment could have collateral consequences adverse to her in future family law or dependency proceedings. (*Id.* at pp. 1431-1432.) Should mother again find herself in dependency court, or in a family law custody proceeding, certainly a sustained allegation that she has bipolar disorder, had failed to treat it, and had been involuntarily hospitalized for

that condition, would have an adverse effect. We therefore reverse the order sustaining allegation b-2.<sup>2</sup>

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<sup>2</sup> To the extent that mother also challenges the removal of J.N. from her custody and the order for monitored visitation, the court's termination of jurisdiction following the custody agreement she later reached with father means we cannot fashion an effective remedy regarding removal and visitation orders no longer in effect. Mother does not explain how these orders, separate from the jurisdictional findings, could prejudice her in future proceedings.

### **DISPOSITION**

The order sustaining allegation b-2 under Welfare and Institutions Code section 300, subdivision (b), is reversed. The trial court is directed to correct the sustained allegations a-1 and b-1 to state, "On or about 06-17-17, the mother was arrested for Spousal Abuse." In all other respects, the orders are affirmed.

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EGERTON, J.

We concur:

EDMON, P.J.

LAVIN, J.