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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re OMAR G., a Person Coming Under  
the Juvenile Court Law.

B236558  
(Los Angeles County  
Super. Ct. No. CK62968)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MANUEL V.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Arturo  
Garcia, Referee. Affirmed.

Robert R. Walmsley, under appointment by the Court of Appeal, for Defendant  
and Appellant.

John Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel,  
and Emery El Habiby, Deputy County Counsel, for Plaintiff and Respondent.

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Manuel V. (Father) appeals from the August 2, 2011 jurisdictional and dispositional orders of the juvenile court adjudging Omar G. a dependent of the court pursuant to Welfare and Institutions Code section 300, subdivision (b) (failure to protect).<sup>1</sup> Father contends that the court improperly considered witness statements in the social studies because they were not admissible under section 355, subdivision (c)(1) and that his due process rights were infringed upon because the Los Angeles County Department of Children and Family Services (DCFS) did not call witnesses. Father also contends that the court erred in denying Father's request to take judicial notice of the family law file and prior dependency file and erred in denying Father's request to call paternal grandmother at the dispositional hearing. Further, Father contends that there was insufficient evidence to support the jurisdictional finding and that the court's dispositional orders should be reversed. Angelica G. (Mother) is not a party to this appeal. We decline DCFS's invitation to dismiss the appeal as moot. We disagree with Father's contentions and affirm the orders of the court.

### **BACKGROUND**

On February 18, 2011, DCFS filed a petition pursuant to section 300, subdivision (a) (serious physical harm); subdivision (b) (failure to protect); and subdivision (c) (serious emotional damage) on behalf of Omar G., born in 2007. DCFS filed a first amended petition on March 24, 2011, alleging pursuant to section 300, subdivision (a) that Father and Mother have a history of engaging in violent altercations, and pursuant to section 300, subdivision (c) that Father emotionally abused Omar G. by engaging in an ongoing family child custody dispute with Mother, including physically assaulting and stalking Mother and making numerous unsubstantiated child abuse referrals against Mother for the past three years. At adjudication, the court dismissed the allegations of section 300, subdivisions (a) and (c) but sustained the petition pursuant to section 300, subdivision (b) that "[o]n a prior occasion," Father grabbed Mother and physically restrained her and made multiple threats to harm Mother and Omar G.'s sibling; and that

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

Father “has mental and emotional problems including stalking and harassing [Mother]. Father has exhibited stalking tendencies, erratic, unstable and irrational behavior. Further [Father] has a history of suicidal ideations. [Father] has failed to receive treatment for said mental and emotional problems.”

The events leading up to the filing of the petition were as follows. Father and Mother have an extensive history with DCFS, beginning in 2006 with sustained petitions regarding caretaker absence and general neglect of Omar G.’s two half siblings by Mother. A sustained petition in 2008 alleged that on November 2, 2007, Father grabbed and physically restrained Mother and made multiple threats to harm Mother and Omar G.’s half sister. Father and Mother also had a history of domestic violence.

The current petition was filed when DCFS received a referral in January 2011 that Omar G. had been injured in a car accident while with maternal grandmother; Omar G. is dirty, has bad body odor, and his hair is matted; the reporting party could not visit Omar G. because of a restraining order; Mother has a history of smoking marijuana; and Mother leaves Omar G. with maternal grandparents, who “are felons.” On January 18, 2011, Mother told DCFS that Father stalks her at the college she attends and she has a restraining order against him. She had served Father that day with papers for an ex parte hearing to modify an existing family law order. Mother denied that Omar G., who was wearing a brown polo shirt, khaki pants and a sweater, had been in a car accident and pointed out that he was clean. School personnel reported that Omar G. was a “sweet, happy child” who “comes to school clean.”

A March 10, 2010 university police report indicated that Father showed up to Mother’s classroom and stated, “I knew I would find you here, you better take care of my son.” On January 22, 2011, DCFS received a referral regarding Father stalking Mother at her college around October or November 2010.

Mother and Father reported to DCFS each other’s alleged drug use, abuse of Omar G., and harassing behavior. Father reported to DCFS that Omar G.’s face and nose are dirty, his hair is uncombed, and Mother had dropped him off at Father’s house dirty and without shoes. He reported that Omar G. does not have his own bed and that maternal

grandfather was a felon. Mother stated that she met Father in 2003 and separated from him in 2007 after he became violent and controlling and pushed her around. In 2008, Father threatened to burn the house down, kill her, and “take [our] baby.” Mother stated that in addition to stalking her at her college where she is enrolled in a master’s program in marriage and family therapy, Father had begun to harass her professor. Mother stated that Father calls her constantly from blocked numbers, texts her, and writes her letters. She reported that Father holds a black belt in martial arts and carries a large knife at all times. She is concerned about Father’s anger issues and Omar G.’s safety during visits with Father because of Father’s explosive temper. She also stated that after visits with Father, Omar G. wets his bed, is fearful, has nightmares, and cannot get to sleep until 1:00 or 2:00 a.m.

Investigation revealed that in 1997 Father had been arrested for inflicting corporal injury on a spouse/cohabitant. In 2003, Father had been convicted of a charge of driving under the influence. The 2007 grabbing incident gave rise to a domestic violence action that lasted from February 2008 to September 2009. Omar G. developed post-traumatic stress disorder as a result of witnessing the domestic violence between Mother and Father. In 2008, Father had been convicted of making a terrorist threat to a social worker and a juvenile court judge and violating a restraining order. He was sentenced to five years’ probation. Mother had an active restraining order against Father, which was issued on November 16, 2007, and is valid until midnight on November 17, 2012. The restraining order requires Father to stay at least 100 yards away from Mother as well as family members and friends, Mother’s home, Mother’s vehicle, and Omar G.’s school. A second restraining order issued on January 25, 2008, expired on January 25, 2011. Father denied stalking Mother and stated he had been at her college to use the computer center.

DCFS reported that Father harassed Mother from 2008 by sending her letters, texts, and leaving voice-mail messages. Mother showed DCFS a letter written by Father to Mother on February 6, 2011, which violated the restraining order. He also made unannounced visits to her home and school and in October 2010 broke into her home. DCFS noted that on January 25, 2011, Omar G. began crying when Father stepped into

the police station where Mother had brought Omar G. for an exchange. When Father picked up Omar G., he called out for Mother. Omar G.'s pediatrician reported to DCFS that Omar G. is up to date on immunizations, there are no medical concerns, and Mother is meeting Omar G.'s needs. Maternal grandparents had no criminal history.

On January 20, 2011, Michele Linden, a professor at Mother's college, wrote a statement that she was "personally aware of harassment and physical altercations" by Father. She stated that she had to contact campus police on several occasions to watch over her classroom and that Father has "threatened [Mother] and pushed and threatened another female student who tried to intervene." On February 24, 2011, Professor Linden wrote a statement that after she made her first statement, Father harassed her by calling her, calling campus police to complain about her, and writing a letter to academic affairs stating a number of untruths about the first statement.

Los Angeles County Sheriff's Department Detective Rick Walters told DCFS, "I have tried to get [Father] into the office but he won't come because he knows I'll arrest him. He definitely has mental health problems and is mentally unstable. He broke into [Mother's] home. We have an eyewitness who saw him enter and exit the home."

Connie White-Betz, Ph.D., told DCFS that she has been Mother's therapist from 2004 and that based on Mother's statements, Father is mentally unstable and has demonstrated aggressive and unpredictable behavior. Dr. Betz opined that Mother had no reason to lie. Dr. Betz stated that although she could not make a diagnosis for an individual she had never met, she believed that based on Mother's reports, Father demonstrates sociopathic behaviors, a narcissistic personality disorder, and mentally unstable characteristics. She noted that he had tried to commit suicide by hanging himself in front of Mother. She stated that Omar G. is being used as a pawn and that Father constantly threatens Mother. She stated that she is concerned for Mother's safety and that she wanted to write a letter to the director of DCFS because she felt that not enough was being done to protect Mother and Omar G.

At the adjudication hearing on August 2, 2011, when the juvenile court asked if there was any objection to receiving DCFS's exhibits 1 through 7 into evidence, Father

stated, “None. So long as they’re received with their attachments.” The court then stated, “Okay. Silence by everyone else means no objection. So I am receiving the trial exhibit list into evidence and all the documents on that list will be received into evidence with attachments.” DCFS stated that it had no witnesses, but the social worker was available for cross-examination.

Father then argued that he wanted his written section “355 objections ruled upon. We had objected to the admission of certain evidence.” Pertinent to this appeal, Father objected to the admission of statements of Dr. Betz, Detective Walters, and Professor Linden unless they were available for cross-examination. In response to DCFS’s argument that *Detective Walters’s* statements were admissible under section 355, Father argued that *Professor Linden’s* statements were not admissible because she was not Omar G.’s teacher and *Dr. Betz’s* statements should not be admitted as part of the social study because she was not Omar G.’s treating physician. The court denied Father’s “motion” to exclude evidence. Father called his probation officer, Jasper Jones, as a witness, and the court sustained an objection to “the exhibit” pertaining to Jones. Jones testified that Father was on probation for a crime involving domestic violence and had completed a parenting class and a domestic violence program. Father also had voluntarily entered into a drug rehabilitation program. Father called paternal grandmother, who testified that she had witnessed Mother and Father yell at each other and Mother pushing Father. She denied knowledge that Father had threatened Mother and Omar G.’s sibling or acted erratically. She denied knowledge that Father had mental or emotional “illnesses.”

In response to the juvenile court’s query, DCFS, Mother, and Omar G. stated they had no witnesses to call. On DCFS’s motion, the court dismissed a section 300, subdivision (b) allegation and the section 300, subdivision (c) allegation. The court also dismissed the section 300, subdivision (a) allegation. Father then argued he had not violated any restraining order because the restraining order that had superseded a previous restraining order had expired on January 25, 2011. After hearing further argument from Mother, DCFS, and Omar G., the court sustained two amended section 300, subdivision (b) allegations that “[o]n a prior occasion,” Father grabbed Mother and

physically restrained her and made multiple threats to harm Mother and Omar G.'s sibling; and that Father "has mental and emotional problems including stalking and harassing [Mother]. Father has exhibited stalking tendencies, erratic, unstable and irrational behavior. Further [Father] has a history of suicidal ideations. [Father] has failed to receive treatment for said mental and emotional problems." The court adjudged Omar G. a dependent of the court. When the court asked whether the parties wanted to proceed to disposition, Father responded that he would "like to go forward today. I don't have my witness [paternal grandmother] here." The court stated, "Well, she's already said it all. There's nothing else for her to say. You all crossed in so many areas here that you didn't ask to cross into, but you already did it. So I'm not going to allow the testimony." After hearing argument, the court terminated jurisdiction and made a family law order for Mother to have full custody with monitored visits for Father. Father appealed.

## **DISCUSSION**

### **A. The juvenile court did not err in admitting Dr. Betz's, Detective Walters's, and Professor Linden's statements, and Father's due process rights were not infringed upon because DCFS did not call witnesses**

Father contends that the juvenile court improperly considered Dr. Betz's, Detective Walters's, and Professor Linden's statements because they were not admissible under section 355, subdivision (c)(1) and that his due process rights were infringed upon because DCFS did not call witnesses. We disagree.

Social studies constitute competent evidence. (*In re Malinda S.* (1990) 51 Cal.3d 368, 382.) Section 355, subdivision (a) provides that "[a]ny legally admissible evidence that is relevant to the circumstances or acts that are alleged to bring the minor within the jurisdiction of the juvenile court is admissible and may be received in evidence." Section 355, subdivision (b) provides that "[a] social study . . . , and hearsay evidence contained in it, is admissible and constitutes competent evidence upon which a finding of jurisdiction pursuant to Section 300 may be based, to the extent allowed by subdivisions (c) and (d)." A "social study" means any written report furnished to the juvenile court

and to the parties by DCFS. (§ 355, subd. (b)(1).) “The preparer of the social study shall be made available for cross-examination upon a timely request by any party” and can be deemed available for cross-examination if “the preparer is on telephone standby and can be present in court within a reasonable time of the request.” (§ 355, subd. (b)(2).)

Section 355, subdivision (c)(1) provides that “[i]f any party to the jurisdictional hearing raises a timely objection to the admission of specific hearsay evidence contained in a social study, the specific hearsay evidence shall not be sufficient *by itself* to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based, unless the petitioner establishes one or more of the following exceptions[.]” (§ 355, subd. (c)(1), italics added.) One of the exceptions is that “[t]he hearsay evidence would be admissible in any civil or criminal proceeding under any statutory or decisional exception to the prohibition against hearsay.” (§ 355, subd. (c)(1)(A).) Another is that “[t]he hearsay declarant is a peace officer . . . a health practitioner . . . a social worker . . . or a teacher . . . .” (§ 355, subd. (c)(1)(C).) Section 355, subdivision (c)(1)(C) also states, “For the purpose of this subdivision, evidence in a declaration is admissible only to the extent that it would otherwise be admissible under this section or if the declarant were present and testifying in court.”

On appeal, Father argues that the juvenile court erred in admitting Dr. Betz’s, Detective Walters’s, and Professor Linden’s statements because, Father claims, they lacked foundation and were hearsay evidence not “otherwise” admissible in a civil trial within the meaning of the exceptions of section 355, subdivision (c)(1)(A) and (C). As previously stated, section 355, subdivision (c)(1) provides that upon timely objection to specific hearsay evidence contained in the social study, the specific hearsay evidence shall not be sufficient *by itself* to support a jurisdictional finding unless an exception set forth in section 355, subdivision (c)(1)(A) through (D) is established. But the statements of Dr. Betz, Detective Walters, and Professor Linden were corroborated by Mother, by Omar G.’s teachers, by university police, and by Omar G.’s pediatrician. Mother stated that Father had been violent toward her and had harassed her with phone calls, text messages, and letters. She stated that Father had a violent temper and had threatened to



kill her and burn the house down. She stated that when Omar G. returned from visits he was fearful, wet the bed, had nightmares, and was unable to sleep at his regular time. She also stated that Father stalked her and harassed her professor at the college. University police reported that Father had shown up at Mother's classroom and told her that she had better take care of Omar G. Omar G.'s teachers said that he was a happy, sweet child who was clean when he came to school. Omar G.'s pediatrician stated that Omar G. has no medical concerns and that Mother meets his needs.

Additionally, the court considered the testimony of Jones, who testified that Father had been on probation for a crime involving domestic violence, and paternal grandmother, who testified that she had observed Mother and Father yell at each other. Therefore, we need not determine the applicability of the exceptions to section 355, subdivision (c)(1), which "limit the extent to which such social study hearsay evidence can be relied on *exclusively*." (*In re Lucero L.* (2000) 22 Cal.4th 1227, 1243, italics added.)

We are not persuaded by Father's further argument that his due process rights were infringed upon because DCFS did not call the "hearsay declarants" it had listed on its witness list. "[D]ue process does not require that the county, rather than the parent, call all witnesses mentioned in the social study." (*In re Malinda S., supra*, 51 Cal.3d at p. 383.) And placing the burden on the parent to subpoena witnesses quoted in the social study does not pose a risk of deprivation of the parent's custodial rights. (*Id.* at p. 384.) The parent may cross-examine adverse witnesses and "employ the court's subpoena power to compel the presence of witnesses mentioned in a social study (§ 341)." (*In re Malinda S.*, at p. 384.) The state has a legitimate interest in resolving the child's status quickly. (*Ibid.*) Therefore, Father had the burden to call witnesses he wished to cross-examine, but failed to do so. He cannot now complain.

We conclude that the juvenile court did not err in admitting Dr. Betz's, Detective Walters's, and Professor Linden's statements contained in the social study report and that Father's due process rights were not infringed upon because DCFS did not call witnesses to testify.

**B. The juvenile court did not err in denying Father’s request to take judicial notice of the family law file and prior dependency file and did not err in denying Father’s request to call paternal grandmother at the dispositional hearing**

Father also contends that the juvenile court erred in refusing his request to take judicial notice of the family law file and prior dependency file. He also argues that the court abused its discretion in refusing his request to examine paternal grandmother at the dispositional hearing. We disagree with his contentions.

Father argues that the juvenile court erred in failing to take judicial notice of the family law file because “DCFS . . . argued for having [Omar G.] declared a dependent of the Court based on Father running to family court.” But in support of his argument, Father cites solely to a section 300, subdivision (c) allegation that had been dismissed, that Father had “‘emotionally abused [Omar G.] by engaging in an ongoing Family Child Custody dispute with [Mother].’” Accordingly, because the allegation was dismissed, the evidence was not relevant and Father’s argument must fail.

Father also contends that the juvenile court’s refusal to allow him to examine paternal grandmother at adjudication regarding his relationship with his son and refusal to allow him to call her at disposition was error because he was denied an opportunity to present relevant evidence. We disagree. We conclude the court did not abuse its discretion in excluding further testimony from paternal grandmother—who had minutes before testified at the jurisdictional hearing—on the basis that there was no new testimony to be offered. (*Maricela C. v. Superior Court* (1998) 66 Cal.App.4th 1138, 1146–1147 [“While a parent in a juvenile dependency proceeding has a due process right to meaningful hearing with the opportunity to present evidence,” “[t]he state’s strong interest in prompt and efficient trials permits the nonarbitrary exclusion of evidence,” “such as when the presentation of the evidence will ‘necessitate undue consumption of time.’”].)

Accordingly, we conclude that the juvenile court did not err in denying Father’s request to take judicial notice of the family law file and prior dependency file and did not err in denying Father’s request to call paternal grandmother at the dispositional hearing.

**C. There was sufficient evidence to support jurisdiction under section 300, subdivision (b)**

Father contends that the evidence was insufficient to support jurisdiction under section 300, subdivision (b). We disagree.

The juvenile court’s jurisdictional finding that the minor is a person described in section 300 must be supported by a preponderance of the evidence. (§ 355; Cal. Rules of Court, rule 5.684(f).) “““When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] In making this determination, all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.]” [Citation.] While substantial evidence may consist of inferences, such inferences must rest on the evidence; inferences that are the result of speculation or conjecture cannot support a finding. [Citation.]” (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1258–1259.)

Section 300, subdivision (b) provides a basis for juvenile court jurisdiction if “[t]he 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 guardian to adequately supervise or protect the child, or 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 . . . .”

“A jurisdictional finding under section 300, subdivision (b) requires: ““(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the child, or a ‘substantial risk’ of such harm or illness.” [Citation.] [Citations.] The third element ‘effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will

reoccur).’ [Citation.]” (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) DCFS has the burden of showing specifically how the minor has been or will be harmed. (*Id.* at p. 136.)

The juvenile court sustained the allegations of section 300, subdivision (b) that Father had grabbed Mother and physically restrained her on a prior occasion and made multiple threats to harm Mother and Omar G.’s sibling. Father contends that the grabbing incident occurred in November 2007 and that subsequently he has attended parenting classes and domestic violence counseling programs. He claims that his recent contacts with Mother, including the texts and letters, have been peaceful attempts to co-parent. While it is true that the particular incident where Father grabbed and restrained Mother occurred in 2007, that incident gave rise to a domestic violence action that lasted from February 2008 to September 2009. Omar G. developed post-traumatic stress disorder as a result of witnessing the domestic violence between Mother and Father. And the evidence shows that from 2008, Father has continued to engage in hostile and acrimonious acts against Mother, threatening to kill her and burn her house down in 2008, breaking into her home in 2010, stalking her at her college in 2010 and subsequently harassing her professor, and continuing to sending her harassing texts, emails, and letters. We conclude the evidence supports the court’s implied finding that Father’s actions harm or pose a substantial risk of harm to Omar G.

Accordingly, we conclude there was sufficient evidence to support jurisdiction pursuant to section 300, subdivision (b). In light of our determination that the juvenile court did not err in admitting statements in the social studies, or in denying Father’s request to take judicial notice of the family law file and prior dependency file, or in denying Father’s request to call paternal grandmother at the dispositional hearing, we need not address Father’s further argument that cumulative errors require reversal of the jurisdictional and dispositional orders.

### **DISPOSITION**

The juvenile court's jurisdiction and disposition orders are affirmed. The Los Angeles County Department of Children and Family Services' "motion to dismiss portion of appeal" filed on February 15, 2012, is denied.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

CHANEY, J.