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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re CHRISTIAN V., a  
Person Coming Under the  
Juvenile Court Law.

B294427

(Los Angeles County  
Super. Ct. No. 18CCJP06177A)

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and  
Respondent,

v.

JULIO V.,

Defendant and  
Appellant.

APPEAL from an order of the Superior Court of  
Los Angeles County, Craig S. Barnes, Judge. Affirmed.

Cristina Gabrielidis, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Jeanette Cauble, Principal Deputy County Counsel, for Plaintiff and Respondent.

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Julio V., the presumed father of now-12-year-old Christian V., appeals from the juvenile court's jurisdiction findings and disposition order declaring Christian a dependent of the juvenile court and removing him from Julio's custody. Julio contends the court's jurisdiction findings and disposition order were not supported by substantial evidence. We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. Detention of Christian*

On September 21, 2018 Christian told his school counselor his father had physically abused him the previous day. Christian said Julio had been driving Christian and his seven-year-old brother Thomas home from school when Christian said he had to go to the bathroom. Julio pulled the car over and told Christian to urinate on a tree at the side of the road. Christian accidentally urinated partially on the car door. According to Christian, Julio became angry and called Christian dumb. When they arrived home, Julio was still angry and pulled Christian roughly by the collar of his shirt. Julio repeatedly punched Christian on the shoulder, called him stupid and asked, "Are you a little bitch?" Christian said he passed out due to the pain; and when he woke up, Julio hit him on the back with a chair. The school counselor observed a cluster of bruises on Christian's shoulder, a scratch on his upper back and a "three-inch burn mark" on his neck. The counselor alerted the Los Angeles County Department of Children and Family Services (Department) and the police.

Two police officers interviewed Christian at his school the same day. The information Christian provided the police officers was largely consistent with what he had told the school counselor. Christian added that, when he got back into the car after urinating, Julio slammed his head into the glove compartment. When they arrived home, Christian barricaded himself in his room by pushing his desk in front of the door; but Julio pushed the door open. Christian denied being hit with a chair. The police interviewed Thomas, who said he did not see Julio slam Christian's head into the glove compartment, but stated, "my brother was going crazy." Initially the police did not find Christian's account credible; however, after noticing bruises on his shoulder and neck, they decided to bring him to the police station and release him to the Department.

The Department social worker interviewed Christian at the police station, and his account again mirrored his earlier allegations. Christian added that Julio had pushed him off the bed and, as Christian was trying to crawl away, Julio "fractured" Christian's leg. The social worker viewed Christian's leg and noticed what appeared to be a healing bug bite. Christian said the fracture was under the bite.

The social worker interviewed Christian's mother, Maritza G., at the police station. Maritza said Christian has had ongoing behavioral issues since the second grade, including tantrums and aggressive outbursts. She reported he had been in therapy and medicated for anxiety, depression and attention-deficit/hyperactivity disorder, but he completed the recommended services earlier that year. Maritza recounted an incident a few months earlier when Christian got very upset and tried to run into the street. Maritza had to physically restrain him, and they

both had bruises as a result. Maritza also explained the family had been under particular stress lately because Julio's father was seriously ill and the family business was struggling. Maritza explained she had been working longer hours over the past month, leaving Julio alone with the children; and she believed the tension between Julio and Christian had been escalating.

The police released Christian to the Department social worker, who immediately took him for a forensic medical examination. The nurse who conducted the examination believed Christian's allegations were sincere and concluded Christian was at risk of harm from Julio. She also reported Christian had disclosed having suicidal thoughts.

On September 25, 2018 the Department filed a petition to declare Christian a dependent child of the juvenile court under Welfare and Institutions Code section 300, subdivisions (a) and (b)(1).<sup>1</sup> The petition alleged Julio had physically abused Christian "by shoving and pushing the child's head against a glove compartment, repeatedly striking the child's shoulder, arm and stomach, grabbing the child and choking the child, inflicting bruises to the child's shoulder and neck" and had "used derogatory and demeaning language towards the child and engaged in extreme verbal confrontations in an aggressive and threatening manner towards the child." The petition further alleged Maritza knew Christian was being physically abused by Julio and failed to protect him.<sup>2</sup>

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<sup>1</sup> Statutory references are to this code.

<sup>2</sup> The petition also named Christian's younger brother, Thomas, who remained in the custody of Maritza. The court ultimately did not assume jurisdiction over Thomas, and he is not a party to this appeal.

At the detention hearing on September 26, 2018 the court ordered Christian detained from Julio and released to Maritza. Julio was granted monitored visitation with Christian for a minimum of six hours per week.

## *2. The Jurisdiction/Disposition Report*

In November 2018 the Department social worker again interviewed Christian in advance of the jurisdiction/disposition hearing. Christian's recounting of the September incident was substantially similar to his prior accounts: He said Julio had pushed his way into Christian's room, pulled him by the hair, hit him repeatedly and pulled him by the collar of his shirt. However, Christian admitted he had lied about certain aspects of the encounter, specifically he said Julio had not called him any names, did not hit him with a chair and did not slam his head against the glove compartment. As for his prior statement he had lost consciousness, Christian said, "I didn't get knocked out. Maybe a little, but only for five minutes. Two minutes of just feeling nothing and the other three minutes was just me trying to get up." He also clarified Julio had punched him repeatedly in the shoulder, but not the face or head.

The Department acknowledged the inconsistencies and admitted fabrications in Christian's account but ultimately concluded there was truth to his general allegation of physical abuse. The Department stated, "It appears that due to the family life stressors, and the increasing aggressive behaviors illustrated by child Christian, that the father acted aggressively due to being overwhelmed by the incident and child Christian's disrespectful behavior. . . . [T]he father's inability to control his anger and use of physical discipline on child Christian, causing marks and bruises, poses a variety of safety issues and concerns . . . ." Julio

did not respond to the Department's requests for an interview, which the Department interpreted as an "unwillingness and/or inability to take self-responsibility and work cohesively with the family to improve their current situation."

### *3. The Jurisdiction/Disposition Hearing*

The jurisdiction/disposition hearing was held on December 4, 2018. Julio's counsel requested the juvenile court dismiss the petition in its entirety because the allegations were not credible. Julio's counsel argued there was no evidence Julio had caused Christian's bruises and Christian may have injured himself by throwing things around his room while he was angry. Christian's attorney requested the court dismiss the allegation of intentional physical abuse under section 300, subdivision (a), and conform the subdivision (b)(1) allegation to proof by striking the portions Christian had admitted were untrue or by generally stating Julio had used inappropriate physical discipline.

The juvenile court declined to strike the extraneous language, sustained the petition on both counts as to both parents and declared Christian a dependent of the court. As for disposition Julio's counsel requested Christian be released to both parents based on Julio's purported willingness to work with the Department on meeting Christian's needs. The court declined to release Christian to Julio, stating, "I'm worried about it spiraling out of control. It sounds as if it's gotten to a point where it's escalating, and that's the concern I have. It sounds like a situation that's difficult and challenging in a lot of ways. But when it gets to this point, it's concerning. . . . Whether there are parts of it where [Christian's] not being completely honest, there are enough parts of it that cause me concern." The court found there remained a substantial danger to Christian's

physical well-being if he were released to Julio, and ordered Christian removed from Julio's custody and released to Maritza.

## DISCUSSION

### 1. *The Jurisdiction Findings Are Reviewable*

Julio does not challenge the juvenile court's jurisdiction findings as to Maritza. Those findings provide an independent basis for affirming dependency jurisdiction over Christian regardless of any alleged error in the finding as to Julio. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1492 [jurisdiction finding involving one parent is good against both; ““the minor is a dependent if the actions of either parent bring [him or her] within one of the statutory definitions of a dependent””]; see *In re M.W.* (2015) 238 Cal.App.4th 1444, 1452; *In re Briana V.* (2015) 236 Cal.App.4th 297, 310-311.) As a result, even if we struck the findings as to Julio, the juvenile court would still be authorized to exercise jurisdiction over Christian and to enter all reasonable orders necessary to protect him, including orders binding on Julio that address conduct not alleged in the petition. (*In re Briana V.*, at p. 311 [“The problem that the juvenile court seeks to address need not be described in the sustained section 300 petition. [Citation.] In fact, there need not be a jurisdictional finding as to the particular parent upon whom the court imposes a dispositional order”]; *In re I.A.*, at p. 1492 [“[a] jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established”]; see generally § 362, subd. (a) [the juvenile court “may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child”].)

Nonetheless, in limited circumstances reviewing courts have exercised their discretion to consider an appeal challenging a jurisdiction finding despite the existence of an independent and unchallenged ground for jurisdiction when the jurisdiction findings “serve[] as the basis for dispositional orders that are also challenged on appeal,” “could be prejudicial to the appellant or could impact the current or any future dependency proceedings” or “the finding could have consequences for the appellant beyond jurisdiction.” (*In re J.C.* (2014) 233 Cal.App.4th 1, 4; see *In re D.P.* (2015) 237 Cal.App.4th 911, 917; *In re Drake M.* (2012) 211 Cal.App.4th 754, 763.)

Because the jurisdiction findings as to Julio serve as the basis for the juvenile court’s disposition order that is also challenged on appeal, we exercise our discretion to review those findings on the merits.

## *2. Substantial Evidence Supports the Juvenile Court’s Jurisdiction Findings*

The purpose of section 300 “is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.” (§ 300.2; see *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 599.) Section 300, subdivision (a), provides that jurisdiction may be assumed if the child has suffered, or there is a substantial risk the child will suffer, serious physical harm inflicted nonaccidentally by the child’s parent. In considering whether there is a substantial risk the child will suffer serious physical harm inflicted nonaccidentally in the future, the court may consider whether “there is a substantial risk of serious future



injury based on the manner in which a less serious injury was inflicted.” (§ 300, subd. (a).) Section 300, subdivision (b)(1), allows a child to be adjudged a dependent of the juvenile court when “[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 a custodian with whom the child has been left . . . .”

Although section 300 requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing (*In re D.L.* (2018) 22 Cal.App.5th 1142, 1146), the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383; *In re N.M.* (2011) 197 Cal.App.4th 159, 165.) The court may consider past events in deciding whether a child currently needs the court’s protection. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1215-1216; *In re N.M.*, at p. 165.) A parent’s “[p]ast conduct may be probative of current conditions’ if there is reason to believe that the conduct will continue.” (*In re S.O.* (2002) 103 Cal.App.4th 453, 461; accord, *In Kadence P.*, at p. 1384.)

“In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note

that issues of fact and credibility are the province of the trial court.” [Citation.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.”” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) We review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence such that a reasonable trier of fact could find that the order is appropriate. (*Ibid.*; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

Julio argues there was not substantial evidence he physically abused Christian or caused him to suffer serious physical harm because Christian’s account of events was unreliable. Julio maintains that “Christian was an out of control child who repeatedly lied about Father abusing him to avoid accepting responsibility for his own particularly bad behavior.” At most, Julio argues, the evidence shows Julio “grabbed Christian’s shirt, possibly causing a small abrasion to Christian’s neck/clavicle area.”

Julio’s argument misstates the evidence before the juvenile court. While Christian acknowledged lying about certain aspects of the confrontation, two items were consistent throughout his recounting of the events: Julio roughly grabbed Christian by the shirt collar and pulled on it hard enough to leave a three-inch mark; and Julio repeatedly punched Christian in the shoulder, leaving a cluster of bruises. This evidence, coupled with the multiple emotional stressors on the family, the escalating confrontations between Christian and Julio and Julio’s failure to take any responsibility for the incident, was substantial evidence

to support the finding Christian had suffered or was at substantial risk of suffering serious physical harm.<sup>3</sup>

For the first time on appeal Julio argues his actions constituted appropriate physical discipline outside the scope of section 300. Even if not forfeited because not raised in the juvenile court (see *In re S.B.* (2004) 32 Cal.4th 1287, 1293 [forfeiture doctrine applies in dependency proceedings]; *In re Wilford J.* (2005) 131 Cal.App.4th 742, 754), Julio has failed to explain how his alleged use of discipline in this case was reasonable such that dependency jurisdiction was unwarranted. “Whether a parent’s use of discipline on a particular occasion falls within (or instead exceeds) the scope of [the] parental right to discipline turns on three considerations: (1) whether the parent’s conduct is genuinely disciplinary; (2) whether the punishment is ‘necess[ary]’ (that is, whether the discipline was ‘warranted by the circumstances’); and (3) ‘whether the amount of

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<sup>3</sup> As discussed, the allegations in the petition included specific details regarding Julio’s actions during the incident. In light of Christian’s recantation of some of those details, it would have been preferable for the juvenile court to accept the suggestion of Christian’s counsel to strike certain specific allegations or to amend the petition to generally assert inappropriate physical discipline. However, the court’s failure to amend the allegations was harmless because, as the juvenile court noted, there was substantial evidence of some physical abuse warranting a finding Christian was a dependent of the court. Further, Julio had sufficient notice of the specific incident to which the allegations pertained such that he could defend himself adequately. (See *In re Andrew L.* (2011) 192 Cal.App.4th 683, 689 [due process not violated so long as variance between pleading and proof could not have misled parent to his or her detriment].)

punishment was reasonable or excessive.” (*In re D.M.* (2015) 242 Cal.App.4th 634, 641.) Here, Julio minimizes his own conduct, arguing he never hit Christian and the child’s bruises were self-inflicted. Without a clear explanation of the conduct being disciplined or the exact manner in which discipline was administered, it is impossible for this court to assess whether such discipline was warranted by the circumstances. Accordingly, Julio has not met his burden of showing the court’s findings were in error.

### *3. The Court’s Disposition Order Is Supported by Substantial Evidence*

Before the court may order a child removed from the physical custody of a parent with whom the child was residing at the time the dependency proceedings were initiated, it must find by clear and convincing evidence that the child would be at substantial risk of physical or emotional harm if returned home and there are no reasonable means by which the child can be protected without removal. (§ 361, subd. (c); *In re T.V.* (2013) 217 Cal.App.4th 126, 135; see *In re Anthony Q.* (2016) 5 Cal.App.5th 336, 347.) “The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.” (*In re T.V.*, at pp. 135-136.)

Julio’s challenge to the disposition order repeats his position that he had never been violent with Christian and Christian’s allegations were unreliable. We have already rejected Julio’s argument the allegations were not supported by substantial evidence. The evidence supporting the court’s jurisdiction finding also supports its disposition order.

**DISPOSITION**

The juvenile court's findings and order are affirmed.

PERLUSS, P. J.

We concur:

SEGAL, J.

FEUER, J.