

Filed 4/20/17 In re Angel M. CA2/1

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REPORTS**

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**IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA**

**SECOND APPELLATE DISTRICT**

**DIVISION ONE**

In re ANGEL M. et al., Persons  
Coming Under Juvenile Court  
Law.

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LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

SANDRA R.,

Defendant and Appellant.

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B270410

(Los Angeles County  
Super. Ct. No. DK12778)

APPEAL from orders of the Superior Court of Los Angeles County, Emma Castro, Commissioner. Dismissed.

Catherine C. Czar, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

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Sandra R. (Mother) appeals from a February 2, 2016 juvenile court order declaring her children Vanessa M., Luis M., David M., and Angel M. dependents of the juvenile court pursuant to Welfare and Institutions Code<sup>1</sup> section 300 and removing them from Mother's custody.

After Mother filed her opening brief, the juvenile court, in an order dated August 2, 2016, returned Vanessa M., Luis M., and David M. to Mother. On August 18, 2016, the court terminated its jurisdiction of Angel M. The court granted Mother sole legal custody of all four children.<sup>2</sup>

Department of Children and Family Services (DCFS) filed a motion to dismiss the appeal as moot. We conclude that the issues Mother raises are moot, and we dismiss the appeal.

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

<sup>2</sup> Pursuant to Evidence Code section 452, subdivision (d), and 459, subdivision (a), we take judicial notice of the August 2, 2016 and August 18, 2016 minute orders terminating jurisdiction.

## **BACKGROUND**

### **I. August 1, 2015, Domestic Violence Incident**

In August 2015, Mother lived with her long time boyfriend, Miguel M. (Miguel), and her four children, Vanessa (age 14), Luis (age 12), David (age 7), and Angel (age 3). Miguel is Angel's father. The older children shared the same father, who was deceased.

On August 3, 2015, the Long Beach Police Department responded to a domestic violence report at Mother and Miguel's home.<sup>3</sup> When the police arrived, they saw that Mother had sustained several injuries—her eyes and face were swollen and her back and shoulders were covered with bruises, contusions and scratches.

Mother said she had received the injuries two days earlier. On August 1, 2015, the family went to Lake Elsinore to spend the weekend with friends and relatives. Shortly after they arrived, her sister-in-law Maria told Mother that Vanessa had confided in her about Miguel's sexual abuse. According to Vanessa, Miguel had tried to lift her blouse and touch her breast. Mother said she was furious when she learned about this.

That night, Mother opted to stay at the house with her children while the other adults planned to go out. Miguel became angry with her and insisted that they go out. Mother excused herself to put the children to bed. While she

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<sup>3</sup> The Long Beach Police Department took the initial report while the Riverside County Sheriff's Department conducted the follow up investigation.

was lying in bed with the children, Miguel entered the room and they began to argue. Miguel became enraged and began strangling Mother while she was in bed with the children. She began to hit Miguel to get him off of her. Miguel began to beat her and, at some point, she was able to push him away and throw a shoe at him. The shoe hit a lamp, which caused the room to become completely dark. The children became very frightened at this point and began yelling.

Miguel got Mother off the bed, pushed her against a closet, and continued to beat her. At one point, he punched her in the face. Mother yelled for someone to call the police. The physical altercation stopped when both Miguel and Mother were restrained by other adults in the house.<sup>4</sup> Mother said she struck Miguel because she had learned he had been molesting Vanessa. She had already decided by this time that Miguel would have to leave the home once they returned. Mother said she never wanted Miguel around her children again. Mother did not call the police immediately, however, because she was worried that her children would be taken away. Mother maintained that Miguel had never hit her before the August 1, 2015, assault. Mother did admit that they'd had verbal arguments in the past and that she had asked Miguel to leave the house when

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<sup>4</sup> Miguel denied grabbing Mother by the neck or choking her. He also said he did not remember how Mother received a punch to the eye. Miguel said Mother threw a shoe at him during their fight, which broke a lamp and caused the children to cry.

he had become aggressive with her, but said he had always refused to leave.

Mother agreed to obtain a restraining order against Miguel and said she would not allow Miguel into the home if he were released from jail. Mother told the police: “I have waned [Miguel] many times not to touch my kids, but he did not listen.”

Vanessa said that Miguel’s August 1, 2015, assault was not the first time he had been violent. Mother had tried to stop Miguel’s drinking and touching of Vanessa but Miguel had refused. Vanessa also described Miguel’s sexual conduct. She said that last summer, while she was on the sofa watching television, Miguel had fondled her breast and buttock. Approximately two weeks before the August 1, 2015, incident, Miguel approached her in the living room and demanded that she take off her clothes. Vanessa refused, which angered Miguel. He tried to reach her to pull up her shirt. He also wrapped his arms around her and kissed her. Vanessa pushed him away and ran to her bedroom. Miguel chased her but she locked the door and her brother Luis showed up. Although Vanessa told Mother about these incidents, Miguel denied that they had taken place.

Vanessa also described what happened on August 1, 2015. Vanessa said she heard lots of noise from her parents’ bedroom, including banging on the wall and objects being thrown onto the floor, as well as shouting, yelling and crying. Vanessa and Luis decided to rescue Mother from Miguel. When Vanessa entered the room, she saw Mother on the

closet floor. Miguel had pinned Mother to the floor and was choking and shaking her. Miguel grabbed Vanessa's arm to pull her away and prevent her from picking up Mother. Miguel punched and slapped Mother's face several times in order to silence her. Angel was on the floor while David was in a corner. Both were crying. The other adults in the house finally intervened and pulled Miguel off of Mother. Miguel shouted that he would take his son, Angel, to Mexico. Mother asked Miguel's brother to call the police, but he refused to do so, stating that if he called the police, their children would be taken away.

Luis confirmed Vanessa's account of the August 1, 2015, incident. According to Luis, Miguel choked and punched Mother. Angel was holding onto Mother's arm and crying while David sat in the corner, crying. Mother had asked Miguel to leave the family home but Miguel had refused to go. Luis also said Vanessa had recently revealed that Miguel had touched her in a sexual manner several times. Miguel also once went into the bathroom when Vanessa was about to take a shower, but quickly left. Luis said he had kept an eye on Miguel in order to protect Vanessa. According to Luis, Mother had also confronted Miguel about Vanessa's claims. Mother also asked Miguel to leave their home, but Miguel had refused to do so. Luis said the family was not safe with Miguel there.

David said he was afraid of Miguel because Miguel had hit Mother during the August 1, 2015 trip. Miguel kicked the door in and pushed Mother against the closet. David

heard a great deal of noise, including screaming, yelling and the sound of objects falling down. Angel was too young to describe what had happened on August 1, 2015.

Miguel was arrested on domestic violence charges. All four children were taken into police protective custody and released to the DCFS. DCFS detained Angel from Miguel and released him to Mother. The other children also remained in Mother's custody.

## **II. Section 300 Petition**

On August 7, 2015, DCFS filed a section 300 petition alleging Angel was at risk due to the domestic violence and sexual abuse in the home. On that same date, the juvenile court ordered Angel detained from Miguel and released to Mother. Mother requested a temporary restraining order against Miguel, which the juvenile court granted.<sup>5</sup>

On August 18, 2015, the clinical social worker (CSW) went to the family home for the first time. Vanessa immediately said that the detention report's allegations regarding Miguel's sexual abuse were not true. During this visit, Mother stressed that she wanted Miguel to be able to visit Angel. She also said she was aware Miguel had been released from custody and had spoken to him by phone. Like Vanessa, Mother said that the detention report was not true. She began to minimize what had been said in the report and repeatedly stated that she did not want Angel to miss out on

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<sup>5</sup> The TRO request stated that Vanessa had reported Miguel sexually assaulted her.

having a father. Mother also indicated that she did not really want a restraining order but rather felt forced to obtain one in order to keep custody of her children.

The CSW interviewed Vanessa alone regarding the sexual abuse. Vanessa said she had a bad habit of sucking on her arm and leaving a mark that resembled a hickey. One day, after Mother left for work, Miguel noticed the mark. Miguel became upset about the mark and asked Vanessa if she had other hickeys. He looked around her neck and pulled up her blouse to make sure she did not have any hickeys on her breasts. When the CSW asked Vanessa if this made her feel uncomfortable, Vanessa became quiet and teared up. She appeared to not want to say anything more about the incident.

On August 19, 2015, the dependency investigator (DI) spoke with Mother's sister-in-law Maria. Maria said that about a week before the August 1, 2015 incident, Vanessa told her Miguel had tried to look at her breasts and that he often tried to hug her by the waist. Vanessa said Mother did not yet know about this conduct. After Maria learned about Miguel's sexual overtures, she told her husband she no longer wanted to have any contact with Miguel. During the ensuing domestic violence incident, Maria saw Mother hit Miguel on the back of the head and saw Miguel punch Mother twice in the face. After the incident, Maria's husband said that Mother did not want to file criminal charges because she did not want Miguel to get deported.



On August 31, 2015, the CSW spoke with David's therapist. The therapist was also beginning to work with Vanessa and Angel. During their sessions, the therapist had begun discussing the domestic violence with the children and the sexual abuse issues with Vanessa. The CSW told the therapist that Vanessa was starting to recant her sexual abuse allegations, which concerned the therapist.

On September 1, 2015, the DI interviewed the family. Vanessa denied any sexual abuse took place and said she never made the statements attributed to her in the detention report. During the interview, Vanessa often contradicted herself and stumbled over her words. She said she only told Maria that she was being sexually abused because she was upset at Miguel for physically assaulting Mother. Vanessa also denied telling Luis about the abuse. She said Miguel had asked her if she had any more hickeys after spotting the mark on her arm but did not try to look at her breasts. Vanessa believed she was to blame for DCFS's involvement with the family. Luis said Vanessa told him about the sexual abuse in June 2015, well before the domestic violence incident took place. Vanessa told him that Miguel had tried to pull down her shirt and had "smacked" her on the buttocks. Vanessa told Luis to "keep it a secret" and Luis believed Vanessa had been truthful when she disclosed the abuse to him.

Mother also denied any sexual abuse took place, claiming that the social worker who first interviewed Vanessa in her presence had lied. Mother said that,

according to Vanessa, Miguel only wanted to make sure Vanessa did not have any other hickeys and never touched her sexually or tried to look at her breasts. Mother said Luis's statements confirming Vanessa's disclosure of the abuse were also untrue. Mother claimed Luis said what he did because he was upset at Miguel for physically assaulting Mother. When asked if she planned to resume her relationship with Miguel, Mother said, "[O]nly time will tell."

On September 14, 2015, DCFS filed a section 300 petition alleging that Vanessa, Luis and David were at risk due to the domestic violence and sexual abuse. In the detention report, the CSW wrote that while DCFS originally believed Vanessa, Luis and David could be kept safe through a voluntary case, it now questioned whether Mother could appropriately protect the children. At the hearing that day, the juvenile court ordered that the three children be released to Mother. The court also ordered counseling assessments and a referral for family preservation services.<sup>6</sup>

The DI also spoke with the children's therapist on this date. The therapist said Vanessa had started to open up about Miguel's behavior. Vanessa told her that Miguel had tried to pull her shirt up, saying he wanted to make sure she did not have any hickeys. On another occasion, Miguel had touched her while they sat together on the couch. The

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<sup>6</sup> Miguel was also interviewed on this date. He said the domestic violence incident had been an isolated incident. He also denied touching Vanessa in a sexual or inappropriate manner.

therapist also believed that Mother, a sexual abuse victim herself, might be subconsciously comparing her own abuse to Vanessa's and judging it as less severe. In some of their joint sessions, however, Mother said she believed Vanessa was there to support her. Nevertheless, DCFS was concerned that Mother was in denial about the sexual abuse and would not protect the children from Miguel. Mother now claimed Luis had lied about the abuse when, in fact, he continued to report that Vanessa had disclosed the abuse. Vanessa now claimed she only told Maria about the abuse because she was upset about the domestic violence incident, when, in fact, she had disclosed the abuse before the incident took place.

On October 1, 2015, DCFS filed first amended section 300 petitions. One petition addressed Angel, with Mother and Miguel as parties. The other petition addressed Vanessa, Luis and David. Miguel was not a party to that petition.

On December 17, 2015, the family's therapist told the DI that the sexual abuse was still being discussed during their therapy sessions. Vanessa told the therapist she was unsure what had happened or whether she had been sexually abused by Miguel. She again denied that Miguel had pulled up her shirt and claimed the information in the first detention report was not true. Mother told Vanessa that if she had been the victim of sexual abuse, she would be there to protect her.

On January 5, 2016, the CSW reported that Mother and Vanessa continued to minimize the sexual abuse and did not seem comfortable talking about the issue. Luis said he believed the abuse took place because he had no reason to think Vanessa had lied. The family was participating in family preservation services. Mother was taking the children to therapy and attending parenting classes.

On February 1, 2016, the juvenile court conducted the jurisdiction hearing. Luis testified that Vanessa had confided in him at least three to four times that Miguel did something to her and told Luis to keep it a secret. Vanessa first confided in Luis two to three years earlier and last confided in him shortly before the domestic violence incident. After the second time she confided in him, Luis began to keep an eye on Vanessa and Miguel in order to protect Vanessa and to make sure nothing happened. He tried to make sure the two were never alone. He was afraid Miguel would do something sexual or “bad” to Vanessa if the two were alone together.

Luis said he did not remember telling the CSW that Miguel had walked in on Vanessa as she took a shower or that Miguel had smacked Vanessa’s buttocks. Luis did say, however, that he would not trust Miguel to be alone with Vanessa. When Vanessa disclosed the abuse to Luis, she seemed disgusted and scared. And while he did not use the words “sexual manner” when describing how Miguel had touched Vanessa, that was what he thought. With respect to the domestic violence incident, Luis said the house was

calmer and better, with fewer arguments, since Miguel had left. He said he would not feel safe if Miguel returned and was frightened of that possibility. Luis also remained concerned that Miguel would do something sexual or inappropriate to Vanessa based on her previous statements to him.

Vanessa testified that she discussed certain matters with the therapist, but not the social worker, because she was afraid Miguel might get deported or face trial if she confided in the social worker. When asked if she would feel safe if Miguel moved back into the home, Vanessa said, “No, not without him taking classes for domestic violence and for sexual abuse.” Vanessa denied telling anyone that Miguel had touched her breast or buttocks. She also denied that Miguel had looked down her shirt. Rather, she said Miguel had asked if she had any other hickeys, which made her feel “really weird.” When asked why she thought Miguel needed to take sexual abuse classes, Vanessa said, “Because he needs to know . . . what my space is and needs to know that I need my personal space and that he shouldn’t go anywhere near it.”<sup>7</sup>

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<sup>7</sup> The following exhibits were also admitted in evidence: (1) August 7, 2015, detention report and attachments; (2) September 14, 2015, detention report and attachments; (3), October 27, 2015, jurisdiction report and attachments; and (4) February 1, 2016, last minute information.

On February 2, 2016, the juvenile court sustained the following count as to all four children: “a-1[:] [¶] On 8/[1]/15, [Mother] and Miguel engaged in a violent altercation in the presence of the child[ren], in that [Miguel] choked the mother and pushed the mother against a closet. [Miguel] struck and slapped the mother’s face with [his] fist, inflicting bruising to the mother’s face. The mother hit [Miguel]’s body. The violent conduct by [Miguel] against the mother, endangers the child[ren]’s physical health and safety, and places the child[ren] at risk of serious physical harm, damage and danger.”

The juvenile court sustained the following counts as to Vanessa only: “b-1[, d-1:] [¶] On prior occasions,[Mother]’s male companion, Miguel . . . [,] father of the children’s sibling, Angel M[.] . . . sexually abused the child, Vanessa M[.] by fondling the child’s breast and buttocks and tickling the child’s breast and body. [Miguel] kissed the child, wrapped [his] arms around the child’s body and demanded the child[] take off her clothes. [Mother] knew of [Miguel]’s sexual abuse to the child and was unable to protect the child in that the mother allowed [Miguel] to reside in the child’s home and have unlimited access to the child. Such sexual abuse of the child by [Miguel], and the mother’s inability to protect the child endangers the child’s physical health and safety and places [the] child . . . at risk of serious harm, damage, danger, [and] sexual abuse.”<sup>8</sup>

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<sup>8</sup> The juvenile court interlineated the petition to change the allegation that Mother “failed to protect the

The juvenile court found Luis to be honest and credible while noting he might know more about the sexual abuse than what he testified to. The court also noted that Vanessa's prior statements and testimony were inconsistent and found that her initial statements were true while her subsequent recantation was false. The court sustained the domestic violence charge, even though it might have been an isolated incident, based on its severity and because the family later tried to protect Miguel by covering up his sexual abuse of Vanessa.

With respect to disposition, the juvenile court declared the children dependents. The court ordered Angel removed from Miguel's custody and maintained custody of all the children with Mother. The court ordered Mother receive counseling regarding sex abuse awareness as well as individual counseling for all the children. The court further ordered that Miguel receive sex abuse counseling for perpetrators and individual counseling for domestic violence. Angel would have monitored visits from Miguel two times a week while the other children could have monitored visits with Miguel if they wanted to. Mother could not serve as the monitor. The court also allowed DCFS to conduct

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child" to Mother "was *unable* to protect the child" and changed "the mother's failure to protect the child endangers the child's physical health and safety" to "the mother's *inability* to protect the child endangers the child's physical health and safety." (Italics added.)

unannounced visits to the home. Miguel and Mother each filed a timely notice of appeal.<sup>9</sup>

### DISCUSSION

On appeal, Mother states she is not contesting the juvenile court’s jurisdictional findings as to Miguel and acknowledges that a true finding under one subdivision is sufficient for juvenile court jurisdiction. Moreover, “an order terminating juvenile court jurisdiction [generally] renders an appeal from a previous order in the dependency proceedings moot.” (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.)

Nevertheless, Mother contends, even if sufficient evidence supports the juvenile court’s assumption of jurisdiction based on Miguel’s actions, this court should address the sufficiency argument as it relates to Mother’s actions or inaction because the juvenile court’s findings as to Mother may unduly prejudice her in the future. Those findings “could be prejudicial to [Mother] or could potentially impact the current or future dependency proceedings [citations]; or . . . ‘could have other consequences for [Mother], beyond jurisdiction.’” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763; *In re D.P.* (2015) 237 Cal.App.4th 911, 917.)

We decline to exercise our discretion in this instance. In *Drake M.*, *supra*, 211 Cal.App.4th 754, the father challenged a single jurisdictional finding against him

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<sup>9</sup> Miguel’s appeal was dismissed as abandoned on November 14, 2016.



involving his use of medical marijuana. Because this single jurisdictional finding was the difference between the father being an offending parent versus a nonoffending parent, the appellate court addressed the merits of his appeal. The *Drake M.* court noted that DCFS had failed to show that the father was unable to care for his child due to substance abuse. “[W]ithout more, mere use of drugs by a parent is not a sufficient basis on which dependency jurisdiction can be found.” (*Id.* at p. 764.) There was no evidence that the father had a substance abuse problem or that the father was unable to supervise or protect his child. (*Id.* at pp. 767–769.) The jurisdictional finding involving the father was therefore reversed. (*Id.* at p. 771.)

However, “the *Drake M.*[, *supra*, 211 Cal.App.4th 754] decision does not suggest that this court must address each of several jurisdictional findings against a parent because if all such findings are reversed, the parent will be nonoffending.” (*In re Briana V.* (2015) 236 Cal.App.4th 297, 309.) “This would completely undermine the general rule that we need not address jurisdictional findings involving one parent where there are unchallenged findings involving the other parent. [Citation.] Instead, it would turn this rule on its head, requiring the appellate court to address all jurisdictional findings against a parent even when the jurisdictional findings involving the other parent are not challenged. This takes the *Drake M.* exception too far.” (*Brianna V.*, at pp. 309–310.)

Furthermore, unlike *Drake M.*, *supra*, 211 Cal.App.4th 754, it is unlikely that any alleged error in the jurisdictional findings will have “far reaching implications with respect to future dependency proceedings in this case and [Mother’s] parental rights.” (*Id.* at p. 763.) Mother’s appeal does not challenge the underlying facts of the sustained section 300 petitions; namely, the domestic violence incident and the sexual abuse by Miguel. Instead, Mother only challenges the juvenile court’s finding that she had been unable to protect Vanessa. She also challenges the court’s inclusion of the undisputed fact that she hit Miguel during the domestic violence incident—even though the petition makes it abundantly clear Miguel was the primary aggressor.

*Drake M.*, *supra*, 211 Cal.App.4th at page 763 contemplated the classification of an “ ‘offending’ ” versus a “ ‘nonoffending’ ” parent, which may have ramifications as some courts have required parents be nonoffending to be given placement consideration. (See *In re John M.* (2013) 217 Cal.App.4th 410, 420–425.) Here, it appears the juvenile court gave mother placement consideration without regard to her status as an offending or nonoffending parent. Indeed, the juvenile court never removed any of the children from Mother and terminated jurisdiction only six months later, with Mother retaining custody of all the children. Thus, it is difficult to see how the juvenile court’s findings could have other consequences for Mother, beyond jurisdiction.

Mother cites general hypothetical consequences, arguing that the findings could affect her in future dependency or family court proceedings. Mother also contends that although juvenile proceedings are confidential, jurisdictional facts might be disclosed in a future petition or licensing or employment application. Such speculation is insufficient. (See *In re I.A.* (2011) 201 Cal.App.4th 1484, 1493 [refusing to reach merits of appeal where father “has not suggested a single specific legal or practical consequence” from court’s finding].)

**DISPOSITION**

The appeal is dismissed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

LUI, J.