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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re L.G. et al., Persons  
Coming Under the Juvenile  
Court Law.

B287041

(Los Angeles County  
Super. Ct. No.CK56724)

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Respondent,

v.

S.H.,

Appellant.

APPEAL from an order of the Superior Court of  
Los Angeles County, Emma Castro, Temporary Judge. (Pursuant  
to Cal. Const., art. VI, §21.) Affirmed.

Johanna R. Shargel, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Peter Ferrera, Deputy County Counsel, for Respondent.

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Mother Sonia H. appeals the juvenile court's finding of jurisdiction over her minor sons under Welfare and Institutions Code section 300, subdivision (a).<sup>1</sup> Mother contends the jurisdictional finding under section 300, subdivision (a) cannot stand because the children were never physically injured by the domestic violence between her and the children's father, Luis G. Mother does not challenge the court's concurrent jurisdictional finding under section 300, subdivision (b). Assuming mother's appeal is justiciable, we disagree with mother's narrow interpretation of section 300, subdivision (a). We accordingly affirm.

### **BACKGROUND**

Mother and father are parents to two boys, Luis (now 9) and Evan (now 6). Mother and father have a history of involvement with the Los Angeles County Department of Children and Family Services (DCFS) due to ongoing domestic violence.<sup>2</sup> The children were declared dependents under section 300, subdivisions (a) and (b) in September 2013 after an incident in which father punched mother in the head while she was holding Evan. They were placed with mother, but were removed

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

<sup>2</sup> Mother also had a prior dependency case involving Luis and Evan's two older half-siblings. The father of one of the children was awarded legal custody of her. Mother's parental rights were terminated as to the other child, who was adopted by his paternal grandparents.

from her care after the court sustained a section 387 petition alleging two additional incidents in which father violated a restraining order and mother failed to protect the children and did not report the violations to law enforcement or DCFS. During the first incident, father removed Evan from his car seat and choked mother. During the second incident, mother and father engaged in a violent physical altercation in the children's presence. The court ordered mother to obtain individual counseling to address various issues, including the impact of domestic violence on children. Mother reunified with the children in June 2015; the court terminated jurisdiction in December 2015 with a family order giving mother sole custody.

The family came to the attention of DCFS again on May 28, 2017, when DCFS received a referral alleging that father "pushed and punched the mother in the face and torso multiple times" during an argument in mother's driveway. Luis witnessed the incident through the home's screen door, and Evan became upset when he saw mother's facial injuries.

On July 14, 2017, DCFS filed a section 300 petition alleging the following under both subdivisions (a) and (b)(1): "The children, [Luis and Evan]'s mother, Sonia H[.] and the children's father, Luis G[.], have a history of engaging in violent altercations in the presence of the children. On 05/28/2017, the father repeatedly struck the mother with the father's fists. The mother sustained bruising to the mother's arms, scratches on the mother's chest, and the mother's lip was swollen and bleeding. On a prior occasion, the father struck the mother. The mother failed to protect the children as the mother allowed the father to frequent the children's home and have unlimited access to the children in violation of an active restraining order for mother

against the father. The children are prior dependents of the Court due to the parent's [sic] domestic violence. The father has a history of criminal conviction of Battery Spouse and Violate Protective Order. Such violent conduct on the part of the father against the mother, and the mother's failure to protect the children, and the parent's [sic] violation of a restraining order, endangers the children's physical health and safety and places the children at risk of serious physical harm, damage, danger, and failure to protect."

After a hearing, the court ordered the children detained in shelter care and granted mother monitored visitation. During DCFS's subsequent investigation, both children told a social worker they had seen mother and father fighting and were afraid of father. Luis also disclosed that he and Evan "[s]ometimes . . . hide in case we don't get hit" during parents' fights.

The court held a combined jurisdiction and disposition hearing on October 16, 2017. The court sustained the petition as pled and declared the children dependents under section 300, subdivisions (a) and (b). The court found that the parents had "a pattern of domestic violence that goes back many years" that placed the children at risk of suffering physical harm at their hands. It expressed concern that the children could become involved in altercations between the parents, noting, "[t]hey are capable of opening screen doors and opening doors as they observe their father, once again, engaging in physical violence towards the mother." The court removed the children from mother and placed them with paternal grandmother. It ordered monitored visitation for mother and reunification services including domestic violence classes, parenting classes, and counseling. Mother timely appealed.

## DISCUSSION

Mother challenges only the court's finding under section 300, subdivision (a); she does not dispute that the court properly exercised its jurisdiction under section 300, subdivision (b)(1). Mother acknowledges this may render her appeal nonjusticiable, as the children will remain under the court's jurisdiction even if we reverse the section 300, subdivision (a) finding. Indeed, in her reply brief mother notes that "no consequences at all," will flow from an opinion on the merits, "as the children will remain dependents regardless." She nevertheless requests that we exercise our discretion in favor of hearing her appeal, because the subdivision (a) finding "could prejudice mother in future dependency or family law proceedings, and also subject her to registration on the Child Abuse Central Index (CACI) under the Child Abuse and Neglect Reporting Act, Penal Code sections 11164 through 11174.3."

Under the doctrine of justiciability, courts generally do not act upon or decide moot questions or abstract propositions, nor do they issue advisory opinions. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491.) "An important requirement for justiciability is the availability of 'effective' relief—that is, the prospect of a remedy that can have a practical, tangible impact on the parties' conduct or legal status." (*Id.* at p. 1490.) "For this reason, an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence," or is unchallenged. (*Id.* at p. 1492.) "However, we generally will exercise our discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as a basis for the dispositional orders that are also challenged on appeal [citation]; (2) could be

prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citation]; or (3) ‘could have other consequences for the [the appellant], beyond jurisdiction’ [citation].” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762.)

Here, mother contends the section 300, subdivision (a) finding could prejudice her in future proceedings, because she might be placed on the CACI and might be denied future reunification services under section 361.5, subdivision (b)(3). In her reply brief, she further asserts that she could be prevented from being licensed to care for other children or volunteer in any setting with children, “like the Girl Scouts.” Mother has not shown that the unchallenged finding under section 300, subdivision (b)(1), which is based on identical conduct, will not have the same consequences. Nor is it clear how this finding under section 300, subdivision (a) will have different or additional effects beyond those stemming from the previous petition based on similar conduct that was sustained under section 300, subdivision (a). We accordingly find mother’s justiciability argument very weak.

Nevertheless, we exercise our discretion in favor of reaching the merits here. Mother’s sole contention is that the statutory language of section 300, subdivision (a) precludes the court from taking jurisdiction unless the children in question or their siblings have in fact suffered serious physical harm inflicted nonaccidentally by a parent or guardian. We disagree.

Section 300, subdivision (a) permits a juvenile court to take jurisdiction over a child when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or

guardian.” The provision continues: “For purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm.” (§ 300, subd. (a).) Mother focuses narrowly on this second sentence, arguing that it requires the child or his or her siblings to have suffered a physical injury at some point in time if the current allegations rest on a substantial risk of injury rather than an actual injury.

Other courts have rejected this narrow interpretation of section 300, subdivision (a). We join them. *In re Marquis H.* (2013) 212 Cal.App.4th 718 (*Marquis H.*) is instructive. There, the juvenile court assumed jurisdiction under section 300, subdivision (a) where Marquis’s parents severely physically abused their grandchildren, but not Marquis. (*See id.* at p. 720.) The parents argued that jurisdiction over Marquis was improper under the second sentence of section 300, subdivision (a) because they abused Marquis’s *nieces and nephews*, not his *siblings*. (*Id.* at p. 725.) They contended that the court could exercise jurisdiction under the three scenarios “expressly spelled out in the second sentence of the statute.” (*Ibid.*) The appellate court rejected this contention, stating, “We do not read section 300, subdivision (a), as prohibiting the exercise of jurisdiction in situations other than those specified in the second sentence of the statute. In our view, the permissive language of the second sentence merely sets forth scenarios in which the statute may apply. As the Agency points out, ‘the Legislature could not be expected to foresee and codify every mode of physical abuse which

may place a child at substantive risk of physical harm by an abusive parent.” (*Id.* at p. 725.) The appellate court further reasoned that the juvenile court “is vested with broad discretion in determining whether ‘there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally.’ (§ 300, subd. (a).)” (*Id.* at p. 726.) Thus, the appellate court found it irrelevant that neither Marquis nor his siblings had been abused, despite the seemingly restrictive language of section 300, subdivision (a).

Similarly, in *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598-599 (*Giovanni F.*), the appellate court concluded that the application of section 300, subdivision (a) was appropriate when a child suffers, or is at substantial risk of suffering, serious physical harm inflicted nonaccidentally by the parent by virtue of exposure to domestic violence. The court emphasized that the purpose of section 300 is to provide maximum safety and protection to children, and suggested that purpose would not be served by a restrictive reading of the statute. (*Id.* at p. 599.)

Mother argues that *Marquis H.* and *Giovanni F.* were wrongly decided or distinguishable. We disagree. These cases examined the language of section 300, subdivision (a) and concluded that its expansive purpose would not be served by the restrictive interpretation mother advances. “[T]he 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 Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.) Children who are present when their parents engage in domestic violence may well be at risk of serious injury. This is especially true here, where Evan was in parents’ immediate presence during at least two incidents. On one occasion, he was in mother’s arms when



father hit her; on another, father forcibly removed Evan from his car seat and choked mother. Indeed, the children here recognized this risk and sometimes hid so they would not get hurt. Section 300, subdivision (a) does not require children who are at risk of severe injury to actually sustain injury before the court may step in to effectuate the broad statutory purpose of protecting them.

**DISPOSITION**

The October 16, 2017 order is affirmed.

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COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MICON, J.\*

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