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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re E.R., a Person Coming  
Under the Juvenile Court Law.

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LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

C.R.,

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Defendant and Appellant.

B277739

(Los Angeles County  
Super. Ct. No. DK18488)

APPEAL from a judgment and order of the Superior Court  
of Los Angeles County, Robert S. Draper, Judge. Affirmed.

Elizabeth C. Alexander, under appointment by the Court of  
Appeal, for Defendant and Appellant.

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

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## INTRODUCTION

Father appeals the juvenile court's jurisdictional findings and disposition order removing his infant child from his custody. Father argues that he posed no present threat of harm to the child. We affirm because ample evidence of father's alcohol-fueled domestic violence supported jurisdiction. We also conclude that father's challenge to the disposition order is moot because father has since regained custody of the child.

## FACTS AND PROCEDURAL BACKGROUND

At the time the Department of Children and Family Services (DCFS) became involved in this case, mother and father had been in a relationship for two years and had a baby, who was then five months old. Mother also had a six-year-old daughter from a prior relationship. The parents were unmarried and lived together with the two children. The baby is the only child at issue in this appeal.

### *1. Domestic Violence*

At home on April 9, 2016, the parents argued about father's drinking habits. Father, who had recently drunk four 24-ounce cans of beer, became physically aggressive toward mother. He pinned mother to the wall with his entire body for about 10 to 15 seconds, making it difficult for her to breathe. When mother told him she could not breathe and threatened to call the police, father replied, "Why, I'm not putting my hands on you." Mother escaped and phoned for help. Father fled before police officers arrived. Mother told police officers that "she could not deal with [father's] abuse of alcohol anymore" and that father had slapped her in the past. Police noticed that mother sustained redness to her right bicep during the encounter. As far as the record

discloses, police did not arrest father then or in the ensuing three months.

On July 4, 2016, the parents returned home from a party where father had been drinking beers. Father wanted to continue drinking when they arrived home and became upset when mother told him to stop. Inside their apartment, father yelled at mother, pushed her, slapped her face, and pulled mother into the bedroom. Father then shoved her onto the bed, causing mother to hit her head. Both the baby and the daughter were home during the incident. The baby was in a bouncer in the living room. The six-year-old daughter was in the parents' room during part of the incident and observed some fighting, including father slapping mother. The daughter went to her own bedroom when the fighting escalated.

Law enforcement responded to the home, interviewed the family, and arrested father. The daughter informed police that she had seen father slap mother on four occasions prior to the fight that occurred that night.

## *2. DCFS Involvement*

DCFS became involved in this family's life after receiving a referral about the July 4, 2016 domestic violence incident. During the investigation, the family downplayed the domestic violence. Mother initially stated that father yelled, pushed, and slapped her. But, she told DCFS that this was the first time an argument had become physical, and attributed the violence to father's drinking. Mother later altogether denied that father hit her and stated she had only called the police to get father to leave their home. In an August 2016 interview, mother denied that the daughter ever saw the July domestic violence incident. She also stated that father did not have a drinking problem. Mother

reported that the criminal case against father for the July 2016 domestic violence had been dropped.

The daughter denied observing the altercation and stated that the parents never fought, contradicting her earlier statements to police. In a subsequent interview, the daughter appeared to be coached in her responses to the social worker. In response to questions about the domestic dispute and whether father was nice, the daughter told the social worker “I don’t remember.” She also denied that father drank alcohol, specifically saying he did not drink beer.

Immediately following the incident, father denied that anything had occurred. He only admitted that he may have pushed mother when he was walking away and acknowledged that he was intoxicated during the incident. Father told DCFS that his arrest was for intoxication, not domestic violence. Father then denied he was arrested.

Later in August 2016, father admitted to the social worker that he tore mother’s sweater while pulling her into the bedroom and pushing mother onto the bed during the July 4th incident. He denied that the daughter observed the incident, but acknowledged she entered the bedroom to find out what was going on. Father also admitted that he pinned mother to the wall during the April 2016 incident because she was upset at him for drinking one beer and because mother would not give him the car keys. Father denied hitting her.

During the interview, father also admitted that mother had previously told him he had anger issues but he did not listen. Father stated that he had difficulty suppressing his anger, which was triggered when he felt mother was controlling him. He denied a drinking problem but acknowledged that alcohol

affected his behavior toward his family when he was upset. During the investigation, it also came to light that father physically abused his ex-wife, resulting in his arrest for domestic violence in 2010. Father explained away this arrest by stating that police actually arrested him for a physical altercation with his brother-in-law.

DCFS filed a Welfare and Institutions Code, section 300 petition, alleging jurisdiction under subdivisions (a) and (b) based on father's domestic violence and his alcohol abuse.<sup>1</sup> DCFS detained both girls in mother's custody, and father agreed to stay out of the home. The juvenile court sanctioned the arrangement, detained the baby from father, and ordered that his visits be monitored. Father began living with the paternal grandmother. Both parents began attending domestic violence classes.

Despite agreeing to stay out of the family home, father returned. He was seen there twice by the daughter's biological father and biological paternal grandfather, when the daughter was dropped off after visitation. Although both mother and father initially denied that he had returned to the home, they fell silent when DCFS informed them father had been identified at the house by two different people.

Just prior to the jurisdiction hearing, father had completed 26 group domestic violence sessions and his participation was marked as "fair." Both father and mother enrolled but had not begun parenting classes.

### *3. Jurisdiction and Disposition*

On August 31, 2016, the court adjudicated the section 300 petition. The court received into evidence the DCFS reports and

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

documents confirming the parents' participation in programs, and heard arguments from counsel. Both parents requested that the petition be dismissed.

DCFS urged the court to sustain the petition and argued that although the parents were participating in programs, the domestic violence and alcohol abuse remained unresolved. DCFS asserted that father was not ready to return to the family home and had not even considered what he would do differently if allowed to return.

The children's attorney joined in DCFS's arguments, asserting that the evidence amply showed an ongoing risk to the children. The children's attorney noted that the children were in the home during the July incident and the daughter had entered the bedroom during it. The children's attorney argued that the children were at risk of physical harm.

The juvenile court sustained the jurisdiction allegations based on domestic violence and alcohol abuse. The court opined that the parents downplayed the serious risks created by both the alcohol abuse and domestic violence. The court stated that such young children should not grow up in a home "where father gets drunk and then beats the mother." The court placed the children in mother's custody and ordered the baby removed from father's custody, with services in place to reunify the family. The court acknowledged the parents had immediately engaged in services, but again noted their minimization of the problems within the home.

#### *4. Subsequent Order Returning Custody to Father*

Father timely appealed. While the appeal was pending, the juvenile court issued an order on April 12, 2017, that permitted

Father to return to the family home and modified the child's placement from "home of parent mother" to "home of parents."

## DISCUSSION

Father appeals both jurisdiction and the disposition order removing the child from his custody. We address each in turn.

### 1. *Substantial Evidence Supports Jurisdiction*

Father argues that the court erred in finding jurisdiction over his child pursuant to section 300, subdivisions (a) and (b). We review the juvenile court's jurisdictional findings for substantial evidence. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 966.) "Substantial evidence is relevant evidence which adequately supports a conclusion; it is evidence which is reasonable in nature, credible and of solid value." (*In re R.C.* (2012) 210 Cal.App.4th 930, 941.) Although substantial evidence may consist of inferences, the inferences " 'must be "a product of logic and reason" and "must rest on the evidence" [citation]; inferences that are the result of mere speculation or conjecture cannot support a finding [citations].' " (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393-1394, italics omitted.) Conflicts in the evidence and reasonable inferences are resolved in favor of the prevailing party. (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.) "[I]ssues of fact and credibility are questions for the trier of fact." (*Ibid.*)

When a section 300 petition alleges multiple subdivisions, " 'a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence.' " (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

We proceed with our jurisdictional analysis under section 300, subdivision (b), which authorizes jurisdiction if the “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 . . . .” (§ 300, subd. (b)(1).) “Although ‘the question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm’ [citation], the court may nevertheless consider past events when determining whether a child presently needs the juvenile court’s protection. [Citations.] A parent’s past conduct is a good predictor of future behavior.” (*In re T.V.* (2013) 217 Cal.App.4th 126, 133.) “The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.” (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.) “The focus of section 300 is on averting harm to the child.” (*In re T.V.*, at p. 133.)

Here, substantial evidence of father’s alcohol-fueled domestic violence supported the juvenile court finding a substantial risk of harm to the child. On July 4, 2016, father physically assaulted mother, slapping, pushing, and shoving her. The six-year-old daughter witnessed the abuse and the infant was under the parents’ care and within the home when it occurred. Engaging in domestic violence while the daughter and infant were in the home placed the children “in a position of physical danger from this violence, since, for example, they could wander into the room where it was occurring and be accidentally



hit by a thrown object, by a fist, arm, foot or leg, or by [the victimized parent] falling against them.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) Even where the children may not suffer physical abuse during incidents of domestic violence, “[d]omestic violence impacts children . . . , ‘because they see and hear the violence and the screaming.’” (*In re T.V.*, *supra*, 217 Cal.App.4th at p. 134.) Based on the likelihood of physical abuse, courts have concluded that “domestic violence in the same household where children are living is neglect; it is a failure to protect [the child] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. Such neglect causes the risk.” (*In re Heather A.*, at p. 194; *In re Benjamin D.* (1991) 227 Cal.App.3d 1464, p. 1470, fn. 5 [“Both common sense and expert opinion indicate spousal abuse is detrimental to children.”].)

Father’s domestic violence was not an isolated event. Several months prior to the July incident, police responded to the parent’s home because father pressed mother against a wall, and made it difficult for her to breath. Both 2016 incidents revolved around father abusing alcohol and mother confronting him about his drinking. Father’s documented history of domestic violence dates back to 2010, when he assaulted his ex-wife. He had not previously sought treatment for this issue.

Although father voluntarily left the family home and engaged in services, substantial evidence of a present threat to the children still existed. Notably, father’s participation in domestic violence classes was only “fair,” father had yet to complete parenting classes, his alcohol abuse remained unresolved, and father could not articulate how he would change his behavior if he returned home. Father was also seen twice at

the family home despite promising to stay away from it. In interviews, both parents downplayed the seriousness of the domestic violence and completely denied father's alcohol abuse, despite police reports and previous statements from mother and the daughter documenting both of these problems.

Father likens his case to *In re Daisy H.* (2011) 192 Cal.App.4th 713, and asserts that we must reverse the jurisdiction order. The *In re Daisy H.* court reversed the juvenile court's jurisdictional findings because the domestic violence, which had occurred seven years earlier, was too remote. Evidence showed no present threat of violence as the children were well cared for, the parents were separated for several years, and no new domestic violence had been reported. (*Id.* at pp. 716-717.) *In re Daisy H.* is inapt because the domestic violence at issue in the present case occurred recently and the danger to the child remained. The parents denied father's alcohol abuse and minimized the gravity of the situation. Father continued to return to the family home even though he was ordered to stay out of the home. All this constituted substantial evidence of a present threat of danger to the child.

2. *The Appeal of the Disposition Order is Moot*

DCFS requested this Court take judicial notice of the juvenile court's April 12, 2017 order permitting father to return to the family home and modifying the child's placement from "home of parent mother" to "home of parents." Pursuant to Code of Civil Procedure section 909 and Evidence Code section 459, we have taken judicial notice of the order. DCFS argued in its brief that the custody issue has been mooted by this court order. We agree.

“‘[A]n action that originally was based on a justiciable controversy cannot be maintained on appeal if all the questions have become moot by subsequent acts or events. A reversal in such a case would be without practical effect, and the appeal will therefore be dismissed.’ [Citation.]” (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404.) Since the child has been returned to Father, a reversal of the disposition order will have no “practical, tangible impact on the parties’ conduct or legal status.” (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1490.) The court’s subsequent order thus mooted the custody issue on appeal. (*Ibid.* [“When the court cannot grant effective relief to the parties to an appeal, the appeal must be dismissed.” (Italics omitted.)].)

Father asserts that we should address his disposition order challenge because he will be prejudiced by his “new history with Child Protective Services.”<sup>2</sup> (*In re Dylan T.* (1998) 65 Cal.App.4th 765, 769 [“An issue is not moot if the purported error infects the outcome of subsequent proceedings.”].) Yet, we already have reviewed the record and concluded that substantial evidence of father’s abusive behavior (which predicated the disposition order) supported jurisdiction. Thus, father will not be subject to undue prejudice from our decision not to review the mooted disposition order.

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<sup>2</sup> We understand Father to be referring to DCFS.

**DISPOSITION**

We affirm the court's judgment and order.

RUBIN, Acting P.J.

WE CONCUR:

FLIER, J.

GRIMES, J.