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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re ETHAN A., a Person
Coming Under the Juvenile
Court Law.

B295353

(Los Angeles County
Super. Ct. No. 18CCJP04871A)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and
Respondent,

v.

JANET C.,

Defendant and
Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Emma Castro, Juvenile Court Referee.
Appeal dismissed.

Matthew I. Thue, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles Assistant County Counsel, and Stephanie Jo Reagan, Principal Deputy County Counsel, for Plaintiff and Respondent.

Janet C., the mother of 10-year-old Ethan A., appeals the juvenile court's jurisdiction finding and disposition order declaring Ethan a dependent of the juvenile court and removing him from parental custody after the court sustained allegations that Janet had physically abused Ethan and medically neglected his mental health needs and Ethan's father had emotionally abused Ethan, causing him to suffer extreme anxiety, depression, withdrawal or untoward aggression. Limiting her appeal to the court's finding she had physically abused Ethan, Janet contends evidence that she had slapped Ethan and pulled his hair is insufficient to support the court's jurisdiction finding of physical abuse. We dismiss the appeal because Janet has failed to raise a justiciable controversy for which we can grant any effective relief.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Dependency Petition

In August 2018 the Los Angeles County Department of Children and Family Services (Department) filed a petition under Welfare and Institutions Code section 300¹ alleging, among other things, both Ethan's noncustodial father, Carlos A., and Janet had physically abused Ethan; Janet neglected to provide Ethan

¹ Statutory references are to this code unless otherwise stated.

with necessary treatment to address his diagnosed psychiatric problems; and Carlos and his live-in girlfriend had emotionally abused Ethan, placing him at substantial risk of suffering serious mental and emotional harm. Ethan was detained following a section 319 hearing.

2. The Jurisdiction and Disposition Hearings

The contested jurisdiction hearing, which was continued several times, occurred on January 18, 2019. The Department presented evidence that Carlos had physically abused Ethan when Ethan was in his care, including hitting him in the back of the head with a belt. In addition, Carlos and his girlfriend emotionally taunted and belittled Ethan, causing him severe emotional distress. The Department and Ethan's psychiatrist also reported that Janet had neglected Ethan's diagnosed psychiatric needs. Janet had cancelled appointments with Ethan's psychiatrist without rescheduling them or obtaining much-needed follow-up therapy. Janet insisted she was actively researching a different therapist who could see Ethan weekly.

As to the physical abuse allegations involving Janet, Ethan told his psychiatrist and a social worker that Janet had slapped him at times, pulled his hair and, in July 2018, hit him on his shoulder because he had failed to tip a pizza delivery person. In July 2018 Ethan told the Department that he had lied about Janet having hit him recently, although he reiterated she had slapped him and pulled his hair in the past. Ethan testified at the jurisdiction hearing that Janet had smacked his shoulder, but it did not hurt much, far less than when his father hit him with a belt. Janet told the Department she had grabbed Ethan's hair in the past to gain his attention and had slapped him on occasion, without leaving a mark or a bruise. Ethan consistently

maintained he was very afraid of his father, but was not afraid of Janet and wanted to live with her. The social worker was noncommittal when asked whether, at the time of the jurisdiction hearing, she believed Ethan was still at risk of harm in Janet's custody, saying, "I can't answer that." Ethan's forensic psychologist opined in August 22, 2018 that it was "unclear" whether Ethan's descriptions of Janet's behavior rose to the level of "physical abuse."

The court sustained the allegations of physical abuse as to both Janet and Carlos (§ 300, subd. (a)), medical neglect of Ethan by Janet (§ 300, subd. (b)) and emotional abuse of Ethan by Carlos (§ 300, subd. (c)) and dismissed additional allegations. At disposition, the court declared Ethan a dependent child of the court, removed him from parental custody and ordered family reunification services for both parents. The court ordered unmonitored and overnight visits for Janet and monitored visitation for Carlos.

DISCUSSION

Janet contends the evidence she slapped Ethan and pulled his hair on occasion did not rise to the level of "serious physical harm" sufficient to sustain jurisdiction under section 300, subdivision (a). However, as Janet concedes, the court's other jurisdiction findings, which she does not challenge, provide a sufficient and independent basis for affirming dependency jurisdiction over Ethan regardless of any error by the court in sustaining the physical abuse allegations against her. (See *In re M.R.* (2017) 7 Cal.App.5th 886, 896 ["[a]s long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate"]; *In re Briana V.* (2015) 236 Cal.App.4th 297, 309 ["we need not address jurisdictional findings involving

one parent where there are unchallenged findings involving the other parent”]; *In re I.A.* (2011) 201 Cal.App.4th 1484, 1490 “[a]n 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”).)

Some courts have exercised their discretion to reach the merits of a challenge to a jurisdictional finding when the finding (1) is the basis for a disposition order that is also challenged on appeal; (2) could be prejudicial to the appellant or could potentially affect the current or future dependency proceedings; or (3) could have consequences to the appellant beyond jurisdiction. (*In re D.P.* (2015) 237 Cal.App.4th 911, 917; *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.) Relying on these authorities, Janet urges us to consider her challenge to the court’s finding that she physically abused Ethan because of the stigma that finding carries and its potential to negatively influence this or future dependency proceedings.

Janet fails to identify any specific prejudice or adverse consequence that could possibly flow from the single jurisdiction finding she contests. She does not challenge the disposition order let alone argue it was based on the improper finding of physical abuse; nor would reversal of the physical abuse finding against her alter her status from an offending parent to a nonoffending one. (Cf. *In re Drake M.*, *supra*, 211 Cal.App.4th at p. 763 [difference between father being an offending parent and a nonoffending parent “may have far-reaching implications with

respect to future dependency proceedings in this case and father's parental rights"].)²

Janet asserts a sustained finding of physical abuse is prejudicial because it is particularly stigmatizing, far worse than the medical/therapeutic neglect finding against her. (See *In re M.W.* (2015) 238 Cal.App.4th 1444, 1452 [reaching merits of mother's appeal notwithstanding other unchallenged bases for jurisdiction because juvenile court's finding that mother knowingly exposed her children to a substantial risk of physical and sexual abuse "carries a particular stigma"].) Whether that is true in the abstract, Janet concedes the behavior occurred and implicitly acknowledges, by arguing it does not rise to the level of physical abuse, that it is not particularly stigmatizing or inflammatory.

Janet also contends, for the first time in her reply brief, that the finding has the potential to be harmful in other ways: The Department is required to forward the substantiated referral underlying an allegation of physical abuse or severe neglect to the Department of Justice, to be recorded in the Child Abuse Central Index (CACI). (Pen. Code, §§ 11169, 11170.) If the juvenile court finds the allegation not to be substantiated, the Department would be required to notify the Department of Justice, which must remove the individual from the CACI. (Pen. Code, § 11169, subd. (h).)

² While this appeal was pending, on April 26, 2019 the juvenile court granted Janet's section 388 petition and returned Ethan to Janet's custody.

Janet has forfeited that argument by failing to raise it in her opening brief. (See *Argentieri v. Zuckerberg* (2017) 8 Cal.App.5th 768, 789, fn. 10 [arguments raised for first time in reply brief will not be considered absent a showing of good cause]; see generally *In re S.B.* (2004) 32 Cal.4th 1287, 1293 [rules of forfeiture apply in dependency proceedings].) Her contention is also entirely speculative. Nothing in the record indicates the Department has reported Janet to the Department of Justice. (See *In re C.F.* (2011) 198 Cal.App.4th 454, 462 [reporting agency must notify the known or suspected child abuser that the agency has reported him or her for listing on the CACI].) Moreover, although Janet insists the sustained allegation can affect future employment options, Janet has not identified any likely employment position that would be jeopardized by her possible inclusion on the CACI, which remains confidential and not publicly available. In any event, the allegations of medical neglect, unchallenged by Janet, may also support her inclusion on the CACI. (See Pen. Code, §§ 11170, subd. (a)(1), 11165.2, subd. (a) [definition of severe neglect required to be reported includes intentional failure to provide adequate medical care].)

In sum, Janet's appeal is not justiciable; there is no basis to exercise our discretion to consider the merits of her challenge to one of several bases for dependency court jurisdiction.

DISPOSITION

The appeal is dismissed.

PERLUSS, P. J.

We concur:

ZELON, J.

FEUER, J.