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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re S.T. et al., Persons Coming Under the Juvenile Court Law.	B296363
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. H.T., Defendant and Appellant.	(Los Angeles County Super. Ct. Nos. 19LJJP00032A, 19LJJP00032B)

APPEAL from orders of the Superior Court of Los Angeles County, Steven E. Ipson, Commissioner. Reversed and remanded with instructions.

Annie Greenleaf, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and Respondent.

H.T. (father) appeals from the juvenile court's jurisdiction findings and disposition orders, contesting that substantial evidence supports the juvenile court's findings under Welfare and Institutions Code,¹ section 300, subdivisions (b)(1) (failure to protect) and (g) (failure to provide) and that the juvenile court abused its discretion when it removed his two children from his custody and ordered monitored visitation. For the reasons stated below, we agree and reverse.

BACKGROUND

Based on mother's substance abuse and exposure to a detrimental home environment, the Department of Children and Family Services (DCFS) filed a petition under section 300, subdivision (b)(1) regarding mother's two children. Count b-1 alleged that mother had a history of substance abuse and currently abused marijuana, endangering the children's safety. Count b-2 alleged that mother created a detrimental home environment by allowing her male companion to abuse marijuana in front of the children. In an amended petition, count b-3 alleged that mother created a detrimental and endangering home environment for the children by allowing the children's minor relative to sexually abuse them.

DCFS located father, who was being held without bail. The amended petition alleged two counts, b-4 and g-1, against father

¹ All further statutory references are to the Welfare and Institutions Code.

under section 300, subdivisions (b)(1) and (g). Both counts contained the same allegation that father was arrested in December 2018, “has no bail, is currently incarcerated and cannot arrange for the care of the children or provide the children with the basic necessities of life including, but not limited to food, clothes, shelter and medical care. Such failure on [behalf] of the children’s father, endangers the children’s physical and emotional health and safety and places the children at risk of physical and emotional harm or damage.”

At adjudication, the juvenile court dismissed counts b-1 and b-2 and mother pled no contest to a revised count b-3.² Mother also testified to father’s lack of relationship to the children and the minimal support he provided throughout the years. Father lived with the children between 2011 and 2012. The children had stayed overnight with father twice during their lifetimes. Father did not financially support or care for them. Mother and father agreed that the children would live with her.

The juvenile court sustained the counts as to father, finding that father provided very little support to the children and that, since his incarceration, he had not arranged for their care.

At disposition, father requested that the juvenile court order the children in the home of mother and father, arguing that he had arranged for their care through his agreement with mother that the children would remain with her. The juvenile court stated this was not a plan but “a situation that has

² The original count b-3 alleged that mother knew of the sexual abuse, but continued to allow the abuser to have access to the children. As revised, count b-3 alleged that mother was aware of the sexual abuse, but failed to obtain appropriate counseling and parenting services to address it.

resulted.” The children were declared dependents, removed from father, and placed in the home of mother. The juvenile court stated its basis for removal was that father did not make an appropriate plan for the children’s care and provided them with minimal support. The juvenile court ordered monitored visitation for father as well as parenting classes and individual counseling to address sexual abuse awareness.

DISCUSSION

I. Justiciability

As any order we make as to father has no effect as to jurisdiction over the children based on mother, who is not a party to this appeal, we must address whether father’s appeal is justiciable.

Generally, a reviewing court does not review an appeal unless it has a justiciable issue in which the court can grant relief. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1489–1490.) If the appeal only presents an academic or abstract proposition, we will not issue an advisory opinion on the matter. (*Id.* at p. 1490.) This rule applies to dependency proceedings when a parent fails to challenge all the jurisdictional findings of the lower court because a jurisdictional finding against one parent is good against both. (*Id.* at p. 1492.). The minor is a dependent if the actions of either parent bring the minor within one of the statutory definitions of dependent. (*Ibid.*) “As long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate.” (*In re Ashley B.* (2011) 202 Cal.App.4th 968, 979.) Thus, we “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.” (*I.A.*, at p. 1492.)

We may, however, exercise our discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings; or (3) could have other consequences for appellant, beyond jurisdiction. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763.)

We conclude that a merits review of father’s challenge to the jurisdictional findings is warranted here. The jurisdictional findings against father serve as the basis for the disposition orders removing the children from his custody and for monitored visitation. The juvenile court explicitly stated its basis for the orders, that it was father’s failure to make an appropriate plan for the children while he was incarcerated and the lack of support prior to his incarceration. These findings mirror the allegations of counts b-4 and g-1 and provide the sole basis for removing the children from father’s custody which places him on the path to the termination of his parental rights. A dispositional order removing a child from a parent’s custody is a critical safeguard in the juvenile dependency system. (*In re Dakota J.* (2015) 242 Cal.App.4th 619, 631–632.) As the jurisdictional findings mirror the dispositional ones, father’s appeal is justiciable.

II. Jurisdiction

The juvenile court found that jurisdiction over the children was proper under section 300, subdivisions (b)(1) and (g). The allegations pertaining to each subdivision identically stated that father was incarcerated and could not “arrange for the care of the

children or provide the children with the basic necessities of life including, but not limited to food, clothes, shelter and medical care.” Father contends these allegations do not support jurisdiction because the harm to the children, i.e., the sexual abuse by their cousin, was not caused by the failure to provide support and because the children’s basic necessities were met under mother’s care.

We review jurisdictional findings for sufficiency of the evidence. We determine whether there is any substantial evidence to support the juvenile court’s conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the juvenile court’s orders, if possible. (*In re Drake M.*, *supra*, 211 Cal.App.4th at p. 763.) We conclude that substantial evidence does not support the allegations against father.

A. Section 300, subdivision (b)

Jurisdiction is appropriate under section 300, subdivision (b) where the court finds 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 willful or negligent failure of the parent to provide the child with adequate food, clothing, shelter, or medical treatment. DCFS bears the burden of proof and the juvenile court must find by a preponderance of the evidence: (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) serious physical harm or illness to the minor, or a substantial risk of such harm or illness. (*In re R.C.* (2012) 210 Cal.App.4th 930, 941.) DCFS must show “that at the time of the jurisdiction hearing the child is at substantial risk of serious physical harm in the future (e.g.,

evidence showing a substantial risk that past physical harm will reoccur).’” (*In re J.O.* (2009) 178 Cal.App.4th 139, 152.)

Father contends there was no causal nexus between his incarceration and his failure to provide for the children because there was no evidence that the children did not have appropriate housing, shelter, food or clothing as those were provided by mother. Additionally, father argues there is no causal link between his failure to provide financial support or his lack of relationship with the children and a substantial risk of physical and emotional harm or damage that was found true by the juvenile court, mainly, mother’s failure to protect children from cousin’s sexual abuse and her failure to obtain appropriate services. We agree.

There is no connection between father’s failure to provide support and any risk of physical harm to the children. Father left the children with mother who provided for the children’s needs. The children did not lack food, shelter, or medical care and the parents had an informal understanding that the children would continue to remain with mother. The dependency action was brought to the juvenile court’s attention due to concerns regarding mother and stepfather’s marijuana use and those allegations were dismissed. The only remaining count against mother was that she failed to protect the children after a cousin sexually abused them and mother failed to obtain appropriate counseling services to address the abuse. There is no indication that father knew about the sexual abuse or that had he made different arrangements for the children’s care the abuse would have been avoided. After mother pled no contest to that allegation, the children were placed in her home under DCFS’s supervision, suggesting that notwithstanding mother’s failure to

protect in this one instance, she could care for the children. The children were not at substantial risk of harm due to father's absence in supervising them, as mother continued to provide appropriate care.

DCFS argues this case is akin to *In re James C.* (2002) 104 Cal.App.4th 470 at page 479 where the court found that father's criminal history and incarceration endangered the children's physical and emotional health and safety and placed them at risk of physical and emotional harm and danger. However, *James C.* is distinguishable in that the children there were never well cared for by the custodial parent. The children were living in a home that was described as a " 'pig house' " where there were two families living in a three-bedroom home with one toilet. The toilet as well as the rest of the home were covered in feces and urine. "[T]he home was so cluttered that a social worker could not get into a room; and the children, who were filthy, had scabies." (*Id.* at p. 483.) A five year old was allowed to wander streets and alleys unsupervised. (*Ibid.*) Moreover, one of the children was sexually abused by a convicted sex offender that mother allowed to remain in the home despite her knowledge that the conviction was for oral copulation of a minor. (*Ibid.*) Jurisdiction was affirmed under section 300, subdivision (b) because father was unable to protect the children from the deplorable home conditions due to his incarceration. (*Ibid.*) The record also supported an inference that father was unable or unwilling to arrange for care of the children because, once he had been alerted to the terrible conditions, he had made no inquiries about the children's care or supervision. (*Id.* at pp. 483–484.)

This case stands in stark contrast with *James C.* because DCFS and the juvenile court both indicated that mother could

appropriately meet the needs of the children. The children were well-groomed, clean, and dressed appropriately. They did not lack for food and had appropriate medical and dental care. While father's failure to provide support and his lack of relationship with his children is certainly disappointing, the fact remains that mother ensured and continues to ensure that all the children's needs are met. Mother also excluded her minor nephew from the home after she discovered he sexually abused the children. The juvenile court's finding that leaving the children with mother was not a plan but a situation that resulted is immaterial as father's actions or inactions did not cause the children to be at substantial risk of physical harm.

B. Section 300, subdivision (g)

Similarly, we find substantial evidence did not support the juvenile court's finding under section 300, subdivision (g), which provides the juvenile court may adjudge a child a dependent if the child has been left without any provision for support; the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child. The relevant inquiry is whether the incarcerated parent can provide or arrange for the care of the children at the time of the hearing. (*In re J.O.*, *supra*, 178 Cal.App.4th at p. 153.)

DCFS argues that father's informal arrangement that mother would care for the children was insufficient because mother was not providing appropriate care at the time of the jurisdiction hearing. But as discussed above, this argument is not supported by the record nor the by the juvenile court's

decision to place the children in mother's home, albeit under its jurisdiction.

DCFS relies on *In re J.O.*, *supra*, 178 Cal.App.4th 139, which found substantial evidence supported a finding that a parent was incapable of providing care for his children under section 300, subdivision (g). There, the father had provided no financial support to his family for at least eight years, and had not lived with them for over a dozen. (*Id.* at p. 154.) The court affirmed jurisdiction, finding it was supported by father's failure to provide financial support over the years combined with his demonstrated lack of interest in the children's welfare before and after DCFS's intervention. (*Ibid.*) Notably, just as in *James C.*, *supra*, 104 Cal.App.4th at page 483, the custodial parent in *J.O.* was unable to provide adequate care as evidenced by the need to place the children in a series of foster homes after no relative was able to care for the children. (*In re J.O.*, at p. 144.)

Here, the children were never left without the provision of food, shelter, clothes, medical care, or any of the other necessities of life as a result of father's incarceration. His arrangement with mother was sufficient and there is no evidence that father was unable to arrange for the children's care.

DISPOSITION

The juvenile court's disposition orders as to father are reversed. The matter is remanded with instructions that the juvenile court enter a new order finding the allegations in counts b-4 and g-1 not true and for further proceedings consistent with this opinion.

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DHANIDINA, J.

We concur:

LAVIN, Acting P. J.

EGERTON, J.