

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re M.P., a Person Coming Under  
the Juvenile Court Law.

B284858

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. DK21942)

Plaintiff and Respondent,

v.

E.P.,

Defendant and Appellant.

APPEAL from orders of the Superior Court for Los Angeles County, Stephen C. Marpet, Commissioner. Affirmed.

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

Mary C. Wickham, County Counsel, R. Keith Davis,  
Assistant County Counsel, and Jessica S. Mitchell, Deputy  
County Counsel, for Plaintiff and Respondent.

---

This appeal involves a juvenile dependency petition filed with regard to 11-year old M.P. His Father E.P. (Father) appeals the juvenile court's jurisdictional and dispositional orders.<sup>1</sup> Father contends insufficient evidence supports the court's findings that M.P. has suffered or is at risk of suffering serious physical harm caused by Father, and that M.P. has suffered or is at risk of suffering serious emotional damage caused by Father. Father further contends the matter involved a custody dispute, which should be adjudicated in family court, rather than juvenile court. We affirm.

---

<sup>1</sup>In the conclusion section of Father's opening brief, he seeks reversal of the juvenile court's dispositional orders. Father does not advance any claim of error regarding the dispositional orders in the discussion portion of his brief. To the extent Father purports to assert any substantive challenge to the validity of the dispositional order, we deem it forfeited as perfunctory, and assume that his request is based on his hoped-for reversal of the jurisdictional order. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; see Cal. Rules of Court, rule 8.204(a)(1)(B) & (C).)

## **BACKGROUND**

### Circumstances Leading to the Juvenile Petition

M.P. resides with his mother (Mother). Mother and Father filed for a dissolution of their marriage in 2002. The family law court ordered joint legal custody, but Mother has primary custody of M.P., while Father retains visitation on weekends and dinner on certain evenings.

### *Referral and Investigation*

On December 9, 2016, the Department of Children and Family Services (DCFS) received a referral from a school counselor reporting that Father was physically and emotionally abusing M.P. M.P. told the reporting party that Father hit him on his shoulder with his fist. His shoulder hurt for approximately one hour, and his pain level “was at a 7.” According to M.P., Father was upset because he refused to share a video game console with his half-brother. M.P. reported that Father previously hit him in the stomach. The reporting party observed no bruising.

One week later, an investigating social worker conducted private interviews of Mother and M.P. M.P. is diagnosed with attention-deficit/hyperactivity disorder (ADHD); he is prescribed medication to treat the condition. M.P. presented as a mild mannered, sweet child. M.P. told the social worker that Father “always punches me. He punches me because . . . my brother

always likes to jump on me and I got him off of me by carrying him to the bed and I sat him on the bed and he started crying. [Brother] started chasing me and my dad came in and punched me. He punched me in my shoulder . . . . He punches me in chest. . . . After my dad punches me I cry then I go and play the game again. My dad punches me a lot. If my baby brother cries because he can't hurt me my dad will punch me."

M.P. also explained that he often burns himself on the oven at Father's house because Father forces him to cook for himself. He had a small red mark on the tip of his finger.

M.P. was afraid to visit Father and, according to Mother, he was adamant about not visiting him. Mother reported that M.P.'s ADHD "makes him take things that are said literally." M.P. reported to Mother that Father teases him about his clothes and his stuttering; he also calls him gay, a girl, and stupid. The social worker concluded DCFS could not intervene at this point, but encouraged Mother to address her concerns in family court.

The social worker conducted a follow-up with Mother eleven days later. Mother reported that Father was supposed to host M.P. for Christmas Eve. M.P. rang Mother's doorbell at approximately 8:30 p.m.; he was crying, alone and "extremely upset." Father purportedly called M.P. selfish, unbalanced, and ruined.

A few weeks later, the social worker made an unannounced visit to Father's house, accompanied by two Los Angeles Police Department officers. Father allowed them to access his home. M.P. was playing on the computer. Father emphatically denied punching his son. Father said he had spanked M.P. in the past, but only rarely. Father was not aware that M.P. had been diagnosed with ADHD. Father said he teaches M.P. to be independent by cooking for himself, but he does not allow M.P. to remove food from the oven. Father drinks one glass of beer each night. Father admitted he was previously accused of domestic violence, stating that the charges were dropped as false.<sup>2</sup>

M.P. reiterated to the social worker that Father punches him with a closed fist in his shoulder and chest. M.P. did not see or feel any bruising after Father hit him. M.P. was afraid to stay with Father because Father would not take care of him. Later that day, the social worker placed a follow-up call to M.P. M.P. told the social worker he would occasionally climb into the trunk of Father's SUV because "sometimes his father will grab his leg really hard and squeeze it and this hurts."

The following month, Mother called the social worker to report that M.P. was nervous about seeing Father. This anxiety resulted in stomach pain and significant diarrhea.

---

<sup>2</sup> The California Law Enforcement Telecommunication System (CLETS) report does not reflect a disposition following the arrest.

M.P.'s maternal grandmother lives in the home with Mother and M.P. Grandmother reported that M.P. "has always said that his father hits him when he visits and that it hurts." Grandmother initially thought M.P. was acting out of jealousy for his half-brother, but she eventually believed him. M.P. showed grandmother burn marks on his arm. M.P. is afraid of fire and knows he should not touch it, but he has to use the stove and oven in order to feed himself at Father's house. According to M.P., Father calls him gay and says he is "acting like a bitch." M.P. told grandmother that Father squeezed his leg hard during a road trip. M.P. was experiencing nightmares and stomach pain.

The social worker contacted D.G., the mother of M.P.'s half-brother. She reported that Father previously "struck" D.G. while she was holding their son. Father was arrested and D.G. obtained a restraining order against him. According to D.G., her son said that Father hurt him on multiple occasions. The child's school had recently issued an incident report reflecting that his arm was bruised after Father hit him. D.G. also told the social worker that Father "hits M.P. with his hands," punches M.P. to discipline him, and calls M.P. names like "soft" and "weirdo." D.G. also confirmed that Father does not accept M.P.'s medical condition and behavioral issues.

### *Father's Prior Referral to DCFS*

In June 2016, M.P.'s half-brother was referred to DCFS alleging Father committed emotional and physical abuse. Father reportedly kicked D.G. in the shin while she was holding him. Father said he intentionally kicked her. D.G., who was not injured, immediately filed a report with the police. Father was arrested and D.G. obtained an emergency protective order against him. No disposition is available, but DCFS determined that the allegations were unfounded. D.G. told the social worker that a judge confiscated Father's firearms following his arrest, and that Father "used to say he wished he could have had [Mother] killed or he wished he could have killed her."

### *Forensic Interview*

Dr. Lauren Maltby, Ph.D., conducted a forensic interview with M.P. Dr. Maltby is the supervising forensic psychologist at Harbor-UCLA Medical Center. M.P. told Dr. Maltby that Father repeatedly punches him with a closed fist. On occasion, Father will squeeze M.P.'s leg until it hurts. M.P. reported that he burned his finger on the stove "and it [turned] black," but Father "didn't do anything about it." M.P. felt unsafe at Father's home. M.P. wakes up with nightmares while sleeping at Father's home, whereas he sleeps easily and has good dreams when sleeping at Mother's home. Father has called M.P. "pussy," "gay," "baby," and "little girl." Dr. Maltby concluded that Father's treatment of

M.P. appears to have resulted in mental suffering, as evidenced by increased clinginess, a deterioration in M.P.'s grades, and an increase in nightmares.

#### Dependency Petition and Detention Hearing

DCFS filed a dependency petition pursuant to Welfare and Institutions Code section 300.<sup>3</sup> In count a-1, DCFS alleged M.P. has suffered, or there is a substantial risk that he will suffer serious physical harm inflicted nonaccidentally by Father. (§ 300, subd. (a).) Specifically, the petition asserted that Father physically abused M.P. by punching him with a closed fist and squeezing his leg until M.P. felt pain, that the physical abuse was excessive, and that the abuse caused M.P. unreasonable pain and suffering. In count b-1, the petition alleged M.P. had suffered or is likely to suffer serious physical harm or illness due to Father's failure to adequately supervise and protect him. (§ 300, subd. (b).) In count c-1, the petition alleged M.P. is suffering or is likely to suffer serious emotional damage resulting from Father's emotional abuse. (§ 300, subd. (c).)

That same day, the juvenile court convened an arraignment and detention hearing. Both parents appeared and were appointed counsel. The court found that Father was the presumed father of M.P. Father argued detention was

---

<sup>3</sup>All further section references are to the Welfare and Institutions Code.



inappropriate because there was no evidence of physical abuse. The juvenile court found there was a prima facie case for detaining M.P. from Father, ordering his placement with Mother. The court ordered Father's visits to be approved by DCFS and observed by a departmentally-approved monitor. The court also ordered a mental health assessment and a referral for mental health services.

#### Jurisdiction/Disposition Report and Hearing

In preparation for the upcoming hearing, a DCFS investigator interviewed M.P. and Mother. M.P. told the investigator that Father "treats me terribly." M.P. reiterated that Father makes him cook for himself, ignores him, and punches him. Mother did not have much to say to the investigator.

The report noted that M.P. had demonstrated emotional distress when it was time to visit Father. M.P. adamantly opposed visitation with Father; however, the report concluded, "[i]t is difficult to know if the child's statements are being led by his emotions as a child that feels is not being given attention to as much as a younger sibling. It does appear that the child is being sincere about the incidents. It also appears that the incidents that are taking place during the Father's visit with the child, do affect the child emotionally to the point of causing physical illness."

DCFS ultimately recommended the court sustain the petition, declare M.P. a dependent of the court, and order him released to Mother. DCFS also recommended that M.P. have monitored visits with Father in a therapeutic setting, that Mother be provided maintenance services, and that Father undergo enhancement services.

The day after the report was finalized, Father met with the investigator. Father believed M.P. was acting out because he was jealous of his younger brother. Father has spanked M.P., but he “never really had to physically discipline him.” Father was unaware that M.P. was diagnosed with ADHD, or that he was being treated with medication.

DCFS subsequently submitted additional documentation regarding the monitored visitations between Father and M.P. The social worker reported that M.P. is “super sensitive” and easily offended. The social worker did not believe that any of Father’s statements or comments during the monitored visitation were hurtful or offensive, but M.P. felt differently. M.P. refused to meet with Father in an unsupervised setting.

#### Jurisdictional/Disposition Hearing

The juvenile court convened a combined jurisdictional and dispositional hearing. Both parties’ exhibits were introduced into evidence without objection. Father was the only witness. He testified that he has a normal relationship with M.P. Father is

willing to complete conjoint counseling sessions with Mother and M.P. He denied calling M.P. “pussy,” “gay,” or any other derogatory word. Father opined that M.P.’s deficiencies are the result of one-sided parenting by Mother, and that M.P. needs more time with Father because he is a boy.

The juvenile court struck count a-1, but sustained the petition as to the remaining counts. The court found, by clear and convincing evidence, that remaining in Father’s care would be detrimental to M.P.’s physical and emotional well-being. The court was heavily persuaded by the video of M.P.’s interview with Dr. Maltby, along with M.P.’s diarrhea, nervousness and “other issues.” The court ordered M.P. removed from Father’s custody and placed him with Mother. Father was ordered to complete conjoint counseling with M.P. The court ordered monitored visitation for Father at least twice per week, but gave the DCFS social worker discretion to liberalize visitation. The court further ordered DCFS to (1) provide family maintenance services to Mother, (2) refer Mother and M.P. to family preservation, and (3) to provide Father appropriate enhancement services.

## **DISCUSSION**

### **Sufficiency of the Evidence Supporting the Jurisdictional Findings**

Father contends the record contains insufficient evidence supporting the jurisdictional requirements set forth in

subdivisions (b) and (c) of section 300. We disagree.

“A juvenile court may order children to be dependents thereof if the Department establishes by a preponderance of the evidence that allegations made pursuant to section 300 are true.” (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318, citing § 355.) Pertinent here, a child may become a dependent of the court when (1) he or she has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, caused by a parent (§ 300, subd. (b)), or (2) he or she is suffering serious emotional damage or is at substantial risk of suffering serious emotional damage, caused by a parent (§ 300, subd. (c)). In enacting section 300, however, the Legislature did not intend to unnecessarily intrude into family relations or prohibit reasonable disciplinary measures. (§ 300, subd. (j).)

The substantial evidence test is the appropriate standard of review for jurisdictional findings. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) “The term ‘substantial evidence’ means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value. [Citation.]” (*Ibid.*) All conflicts in the evidence are to be resolved in favor of the prevailing party, and issues of credibility are reserved for the juvenile court. (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.) Thus, in dependency proceedings, a trial court’s

jurisdictional determination will not be disturbed unless it exceeds the bounds of reason. (*Ibid.*) The appellant bears the burden to show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

*1. Section 300, Subdivision (b) Finding*

Father argued below that the punching incidents did not occur. On appeal, however, he concedes that the incidents occurred but contends his actions amounted to nothing more than appropriate parental discipline given the evidence that he never left a mark on M.P.

To affirm the juvenile court's jurisdictional finding under subdivision (b) of section 300, there must be substantial evidence in the record of (1) neglectful conduct by the parent of one of the specified forms, (2) causation, and (3) "serious physical harm or illness" to the child, or a "substantial risk" of such harm or illness. (*In re Ricardo L., supra*, 109 Cal.App.4th at p. 567.) Age-appropriate spanking to the buttocks does not constitute "serious physical harm" so long as it does not result in serious injury. (§ 300, subd. (a).) To this effect, parents have the right to administer reasonable punishment. (*In re D.M.* (2015) 242 Cal.App.4th 634, 640–641 (*D.M.*).) Determining whether a parent's use of discipline falls within or exceeds the scope of this right turns on three considerations: (1) whether the parent's

conduct is genuinely disciplinary; (2) whether the punishment is “necessary”, i.e., warranted by the circumstances; and (3) whether the level of punishment was reasonable or excessive. (*Id.* at p. 641.)

The record contains sufficient evidence supporting the juvenile court’s finding that Father posed a substantial risk of serious physical harm to M.P. as alleged in count b-1. M.P. told his school counselor, responding police officers, the investigating social worker, the DCFS investigator and Dr. Maltby that Father repeatedly punched him in the chest and shoulder. M.P. also disclosed that Father squeezed his leg until it hurt, without provocation. M.P.’s grandmother corroborated that he “has always said that his father hits him when he visits and that it hurts.” M.P. burned his finger while removing food from the oven because Father forces him to cook for himself. Moreover, Father allegedly abused M.P.’s half brother, who showed up to school with a bruised arm after Father reportedly hit him. None of this qualifies as appropriate spanking-type discipline regardless of how little visible damage it caused.

As a result of Father’s physical abuse, M.P. has prolonged anxiety about visitation with Father. This anxiety has caused significant diarrhea, which was alleviated only when the social worker assured M.P. he did not have to visit Father that weekend. While it does not appear that M.P. has already

suffered serious physical harm, there is a substantial risk of serious physical harm or illness if the abuse continues. (See *In re I.J.* (2013) 56 Cal.4th 766, 773 [section 300 does not require that a child actually be harmed before the juvenile court can assume jurisdiction; instead, it requires only a “substantial risk” that the child will be abused or neglected].) “‘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.’ [Citation.]” (*Ibid.*) The risk of danger to M.P. is further supported by evidence that Father said he would like to have Mother killed.

In *D.M.*, a mother used her hand and sandal to spank her children on the rare occasion when lesser disciplinary measures proved ineffective. (*D.M.*, *supra*, 242 Cal.App.4th at p. 637.) The spanking was never hard enough to leave a mark or bruise, and the mother later expressed remorse. (*Id.* at pp. 637, 644.) The juvenile court found dependency jurisdiction was appropriate in light of the judge’s categorical view that spanking children with a shoe constitutes physical abuse and that it was a prohibited form of discipline. (*Id.* at p. 637.) The Court of Appeal reversed, instructing the juvenile court to examine whether the mother’s conduct fell within her right to reasonably discipline her children. (*Id.* at p. 643.) Specifically, the juvenile court was instructed to consider mother’s disciplinary motive, the necessity of her punishment, and the reasonableness of its severity. (*Ibid.*)

Relying on *D.M.*, Father maintains the juvenile court erroneously failed to consider whether his motive was disciplinary and whether his acts were reasonable and necessary. Father did not raise this defense below; instead, he denied the existence of the alleged abuse. In any event, the facts in this case differ from *D.M.* Unlike *D.M.*, Father disputed the claim that he punched M.P. and expressed no remorse for his conduct. Father cannot simultaneously argue that the alleged abuse never occurred and that it fell within the scope of reasonable discipline. Moreover, there is no evidence that Father unsuccessfully employed a less harsh method of discipline before resorting to physical discipline. *D.M.* does not support Father's position.

In light of Father's propensity to strike M.P. and his unreserved denial of abuse, the juvenile court reasonably could conclude that M.P. was at risk of physical harm at the time of the jurisdictional hearing. (See *In re Benjamin D.* (1991) 227 Cal.App.3d 1464, 1472 [Father's indifference toward child's pain constituted a substantial risk of serious physical harm].) Further, Father did not acknowledge his mistakes or take any proactive steps to lessen the risk to M.P. (See *In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044 ["denial is a factor often relevant to determining whether persons are likely to modify their behavior in the future"]; see also *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197 ["one cannot correct a problem one fails to



acknowledge”].) In sum, Father does not meet his burden of showing the evidence is insufficient to support the juvenile court’s jurisdictional findings on count b-1.

## *2. Section 300, Subdivision (c) Finding*

Father challenges the sufficiency of the evidence supporting the juvenile court’s finding that M.P. has suffered or is likely to suffer serious emotional damage as a result of Father’s conduct. (§ 300, subd. (c).)<sup>4</sup> Serious emotional damage is evidenced by “severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others.” (*Ibid.*)

Father contends the record is devoid of evidence that M.P. showed signs of serious emotional harm at the time of the hearing. He misinterprets the standard. Actual emotional harm is not required to support dependency jurisdiction under subdivision (c) of section 300; all that is required is a substantial risk of suffering serious emotional damage in the future. (*In re D.P.* (2015) 237 Cal.App.4th 911, 918–919.)

The record is unclear as to whether M.P. already experienced “severe anxiety,” but substantial evidence pointed to the potential of serious emotional harm if the status quo

---

<sup>4</sup> Although we need not consider the merits of this contention in light of our conclusion that the record contains sufficient evidence supporting the juvenile court’s jurisdictional finding on count b-1, we exercise our discretion to do so. (See *In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763.)

remained. The evidence establishes that Father consistently punched M.P., squeezed his leg until it hurt, and called him derogatory names. M.P. feared Father, and he experienced anxiety about visiting him. This anxiety manifested into physical symptoms in the form of uncontrollable diarrhea. M.P. also experienced nightmares and difficulty sleeping at Father's house, but these symptoms did not occur when he slept at Mother's house. Father did not acknowledge any fault or deficiency in his parenting. Father was purportedly unaware of M.P.'s ADHD and, according to D.G., would not acknowledge M.P.'s behavioral issues.

Father contends the jurisdictional finding should be reversed pursuant to *In re Brison C.* (2000) 81 Cal.App.4th 1373 (*Brison C.*). There, the child was the focus of an extended custody battle between his parents. (*Brison C.*, at p. 1375.) DCFS filed a dependency petition alleging the child was suffering serious emotional damage due to his parents' ongoing custody dispute. (*Id.* at pp. 1375–1376.) The Fifth District Court of Appeal concluded: "the record here lacks significant evidence of behavior indicative of severe anxiety, depression, withdrawal or untoward aggressive behavior. In the absence of other indications of severe anxiety or depression, Brison's aversion to his father is insufficient to support a finding that he is emotionally disturbed to such a degree that he comes within section 300." (*Id.* at

p. 1380.) In fact, the evidence demonstrated that Brison was a well-adjusted child who performed well at school and displayed no serious behavioral problems. (*Id.* at p. 1376.)

In *In re A.J.* (2011) 197 Cal.App.4th 1095 (*A.J.*), the Fourth District Court of Appeal held that the minor's nightmares, fear of mother, and belief that mother was crazy evidenced serious emotional damage sufficient to satisfy subdivision (c) of section 300. (*Id.* at p. 1105.) *A.J.* questioned the soundness of the *Brison C.* court's conclusion that Brison displayed no signs of serious emotional damage. (*Ibid.*) The court also distinguished *Brison C.* from the case before it on the grounds that "there, both parents had recognized the inappropriateness of their past behavior and had expressed a willingness to change their behavior and attend therapy. [Citation.] There was no evidence the parents suffered from mental illness, were delusional, or were incapable of 'expressing their frustration with each other in an appropriate manner.' [Citation.] [¶] In sharp contrast, in this case, Mother has never recognized her bad behavior, has never expressed a willingness to change, and appears incapable of acting in an appropriate manner." (*Id.* at p. 1106.)

Father's reliance on *Brison C.* is misplaced because, unlike the father in that case, he has never recognized the inappropriateness of his conduct towards M.P. or expressed a willingness to change. We find *A.J.* to be far more analogous to

this case. M.P.'s diarrhea, nightmares and fear of Father support the trial court's finding that he is at a substantial risk of suffering severe emotional damage if he continues to be exposed to Father's unfettered abuse. We reiterate that Father's denial is highly relevant to determining whether he is likely to modify his future behavior. (*In re Esmeralda B.*, *supra*, 11 Cal.App.4th at p. 1044.)

Resolving all conflicts of evidence in favor of the respondent, the juvenile court reasonably concluded that M.P. faced a substantial risk of suffering serious emotional damage in the absence of judicial intervention. Thus, the court's jurisdictional order on count c-1 is supported by substantial evidence.

#### Dependency Court Jurisdiction Was Proper

Father contends this case belongs in family law court, not juvenile court, "because it has never been alleged that [M.P.] cannot remain safely with Mother."<sup>5</sup> Father appears to imply that Mother pursued intervention by the juvenile court because she "believed her odds of success were greater in dependency court" than family court. However, DCFS filed the dependency

---

<sup>5</sup> We granted both parties' request to take judicial notice of the dependency court's order terminating its jurisdiction over M.P. while granting mother sole physical custody of the child. We denied respondent's concomitant motion to dismiss the appeal as moot.

petition pursuant to a referral from the reporting party, not Mother.

It is well settled that the family law court, not the juvenile court, is the proper entity for adjudicating child custody disputes. (*In re Alexandria M.* (2007) 156 Cal.App.4th 1088, 1096.) “‘The juvenile courts must not become a battleground by which family law war is waged by other means.’ [Citation.]” (*Ibid.*) By contrast, the juvenile court provides the state a forum to “‘restrict parental behavior regarding children, . . . and . . . to remove children from the custody of their parents or guardians.’ [Citation.]” (*In re Chantal S.* (1996) 13 Cal.4th 196, 201.) It is only necessary for the juvenile court to find that one parent’s conduct has created circumstances triggering section 300 for it to assert jurisdiction over a child. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491.)

Father relies on *In re A.G.* (2013) 220 Cal.App.4th 675 (*A.G.*) and *In re Phoenix B.* (1990) 218 Cal.App.3d 787 (*Phoenix B.*), both of which are factually distinguishable. In *A.G.*, the juvenile court sustained a petition under section 300 alleging mother was mentally ill and unable to care for the children. (*A.G.*, *supra*, at p. 677.) As soon as it sustained the petition and removed the children from the mother’s custody, the court granted the father sole custody on the ground there was no evidence the minors were at risk in the

father's custody. (*Id.* at p. 682.) The court then terminated its jurisdiction and filed its custody order in the family law court. (*Ibid.*)

Mother challenged the jurisdictional finding, contending that because father was non-offending, resided with the children and always was capable of caring for them, no need existed for juvenile court jurisdiction. (*A.G.*, *supra*, 220 Cal.App.4th at p. 683.) The Court of Appeal reversed, concluding the custody order filed in the family court after making the challenged adjudication and disposition orders eliminated the risk associated with the children being in Mother's custody. (*Id.* at p. 677.) Crucially, the court found that not only was the father able to care for the children, he was able to "protect them from any harm from Mother's mental illness." (*Id.* at p. 684.)

Unlike *A.G.*, where the children exclusively resided with the father. Mother and Father have joint custody over M.P. Mother has no ability to protect M.P. when he visits Father. Thus, M.P may be endangered if he continues in the physical custody of Father without intervention.

*Phoenix B.* is equally unavailing. In that case, the juvenile court declined to assert dependency jurisdiction after the department of social services concluded there was no basis for the detention of the child. (*Phoenix B.*, *supra*, 218 Cal.App.3d at p. 790–791.) The mother was involuntarily hospitalized and the

child had been released to her father, who was willing and able to take care of the child. (*Ibid.*) The Court of Appeal affirmed the dismissal of the proceedings, finding the record supported the department's decision to dismiss dependency proceedings because father was providing appropriate care and, thus, there was no basis for assuming dependency jurisdiction. (*Id.* at p. 793.)

This case is distinguishable from *Phoenix B.* because DCFS did not dismiss the dependency petition and our review is not from an order declining to assume jurisdiction. The procedural posture is significant because Mother was not named in the petition and she does not challenge the assumption of jurisdiction. Further, *Phoenix B.* did not address the instant situation, where M.P. was purportedly subject to physical and emotional abuse. Thus, Father's reliance on *Phoenix B.* is misplaced.

**DISPOSITION**

The orders are affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

MICON, J.\*

We concur:

MANELLA, Acting P.J.

COLLINS, J.

---

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