Filed 9/7/17 In re Mia C. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re MIA C. et al., Persons Coming Under the Juvenile Court Law. LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. PEDRO C., Defendant and Appellant.	B278751 (Los Angeles County Super. Ct. No. DK18778)

APPEAL from an order of the Superior Court of Los Angeles County, Marguerite Downing, Judge. Affirmed.

Ernesto Paz Rey, under appointment by the Court of Appeal, for Defendant and Appellant.

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

INTRODUCTION

Father appeals from one of several jurisdictional findings declaring his 10-year-old daughter, Mia, and four-year-old son, Andrew, dependent children as described in Welfare and Institutions Code section 300.[1] Father contends the evidence was insufficient to support the finding that his past domestic violence against mother caused serious nonaccidental physical harm to the children. However, father does not challenge any other grounds for jurisdiction, which include findings that (1) he physically abused Andrew by striking him with a belt; (2) his past domestic violence against mother indicated a risk of serious physical harm due to his failure to protect the children; and (3) his history of substance abuse rendered him incapable of providing regular care and supervision of the children. In view of these unchallenged findings, there is no effective relief that this court could order for father, even if we agreed the challenged finding was erroneous. We therefore conclude father's challenge to the jurisdictional finding is not justiciable.

Father also challenges the juvenile court's disposition order denying physical visitation and limiting his contact with the children to monitored telephone calls. Consistent with the court's ruling, the evidence showed that during prior visits father berated and blamed the children for the problems that generated these dependency proceedings, and the children feared the prospect of visitation with father as a result. Based on this record, the court reasonably concluded that, until father

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[1] Statutory references are to the Welfare and Institutions Code, unless otherwise designated.

committed to addressing these issues, physical visitation would be detrimental to the children's emotional well-being. We affirm.

FACTS AND PROCEDURAL BACKGROUND

Prior to the juvenile court's intervention, mother and father were separated and engaged in a family law custody dispute. Under the existing custody order, the children lived with mother, while father had visitation two weekends a month and every Thursday.

On June 15, 2016, the Los Angeles County Department of Children and Family Services (the Department) received a report that the parents had engaged in a violent altercation at Mia's school, following the child's fifth grade graduation ceremony. According to the report, father slapped mother in the face and punched her in the chest after a dispute arose over which parent would take possession of Mia's diploma. Both children were present and cried upon witnessing the violence. Father left the scene when law enforcement arrived.

Mother reported father had a history of domestic violence. Among other incidents, she alleged father punched her in the stomach when she was three months pregnant with Mia. The incident nearly resulted in a miscarriage and required her hospitalization. Mother also alleged father physically threw her out of a car when Mia was two years old, resulting in injuries. She said father was verbally abusive and threatening throughout their relationship, including after the children were born. She suspected father smoked marijuana, but could not say whether he did so around the children.

Both children confirmed that they witnessed father punch mother after Mia's graduation and that they were frightened by the incident. The children also reported that father purposely stepped on Andrew's Dodgers hat at the ceremony because father supported a rival baseball team. The incident made Andrew cry. Mia said father instructed her to "be careful" about what she said and "not to say anything bad" to the Department social worker after the graduation incident.

Mia recalled father slapping mother when she was two years old. She said mother and father argued often, and father regularly yelled and spoke negatively about mother. When asked about her relationship with father, Mia responded that she was "afraid at times because he takes her to a room and makes threats." She said the relationship with father made her "sad and stressed at times." Regarding substance abuse, Mia described a glass pipe that father kept at his home, and said father and his girlfriend consumed a 24-pack of beer during her last visit.

Andrew reported that father disciplined him by slapping him and hitting him with a belt. He said father struck him with the belt in his "stomach area," but did not recall the last time this occurred. The social worker did not observe any visible marks or bruises on Andrew.

Father denied ever engaging in domestic violence against mother and disputed mother's and the children's account of the incident at Mia's graduation. He claimed mother and her brother started the incident by "attack[ing]" and "hitting" him when he would not return Mia's diploma, and insisted that he had never hit, slapped or punched mother. Father agreed to submit to a drug test. The test returned a positive result for marijuana.

On July 25, 2016, the Department conducted follow-up interviews with the children. Mia disclosed that she felt "very uncomfortable visiting her father." She described a recent visit during which father spoke to her privately in a room and told her it was "all her fault for speaking up" about the incident and past domestic violence. She said father was "afraid to go to jail." She reported feeling "scared and nervous due to her father's threats," and said father continued to question her about what she disclosed to the Department. According to the social worker's account, "Mia said due to her father telling her she is a liar and asking her questions about what she disclosed, she no longer wants to visit her father. Mia also described feeling emotional and start[ed] crying." She reported "father is very upset and outraged and frequently yells at her," and that "her fear of her father has become worse."

Andrew also indicated he did not want to see father. He said he was "scared because his father yells at him," but denied any recent physical abuse. He disclosed, however, that father made him fight with the older son of father's girlfriend, and he sometimes came away from the fights with scrapes and scratches.

On August 15, 2016, the Department filed a dependency petition on behalf of the children. With respect to father, the petition asserted two counts under section 300, subdivision (a) regarding father striking Andrew with a belt and his history of domestic violence against mother; three counts under section 300, subdivision (b) regarding the same allegations and father's marijuana abuse; and one count under section 300, subdivision (j)

on behalf of Mia concerning father's alleged physical abuse of Andrew.[2]

Both parents appeared at the detention hearing and were represented by appointed counsel. The court found the Department established a prima facie case for jurisdiction, detained the children from father, and ordered them released to mother.

In view of purported "problems" in the parents' custody case, father's counsel asked the court to incorporate a written visitation schedule into the detention order. The children's attorney alerted the court that the children did not want to have physical contact with father, and argued if visits were ordered, they should occur only at the Department's offices.

The court found visitation with father would be "detrimental" to the children, stressing that their "demeanor completely changed when [father's counsel] asked for visits." On that basis, and based on the evidence in the Department's report, the court temporarily granted counsel's request to limit visitation to twice weekly monitored telephone calls between father and the children.

In advance of the jurisdiction and disposition hearing, the Department interviewed the family again. Andrew reaffirmed that father hit him with a belt. He also said father hit his girlfriend's son, but not Mia because " 'she's a girl.' " Both children reaffirmed that father punched mother in the chest at Mia's graduation.

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[2] The original petition included two counts regarding mother's alleged conduct that the Department subsequently dismissed as unfounded.

Father continued to dispute the children's and mother's reports regarding the graduation incident, and continued to maintain that mother and the maternal uncle started the altercation. He acknowledged some fault only insofar as he refused to return Mia's diploma to mother. As for the prior domestic violence allegations, father denied ever hitting mother. He maintained he did not need an anger management program, but asserted mother would benefit from one.

Both children expressed apprehension about physical contact with father. Mia described him as an " 'angry' father" and said she did not want to visit with him. Andrew said he did not want to return to father's home because " 'he will just yell.' "

On October 27, 2016, the juvenile court held a combined jurisdiction and disposition hearing. Father testified on his own behalf. He denied punching mother in the chest; denied hitting Andrew with a belt; asserted the children had been influenced by mother to fabricate the allegations against him; and denied blaming the children for instigating the dependency proceedings. He also explained that he had a medical marijuana card, said he only smoked as needed to manage his pain, and denied ever smoking in front of the children. He testified that he wanted to resume face-to-face contact with the children.

After hearing argument from counsel, the juvenile court sustained all counts of the petition regarding father's conduct, including the physical abuse and domestic violence counts under section 300, subdivisions (a) and (b). The court found father had an anger management problem, he could be violent, and his testimony was not credible. The court declared the children dependents and ordered them to remain in mother's custody under the Department's supervision.

With respect to visitation, the court continued its order limiting father's contact to monitored telephone calls with the children. The court explained that father "clearly has anger management issue[s]," he said things to "blame" the children for his own misconduct, and he had thus far "refused to get into programming" to address his anger management and domestic violence issues. The court determined physical contact with father would be detrimental to the children's "[m]ental and emotional" well-being, but authorized the Department to liberalize visitation as father progressed with his case plan and when appropriate.

DISCUSSION

1. *Father's Challenge to the Domestic Violence Finding Is Not Justiciable*

"It is a fundamental principle of appellate practice that an appeal will not be entertained unless it presents a justiciable issue." (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1489.) "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." (*Ibid.*) " ' " 'It is this court's duty " 'to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.' " ' " ' " (*Costa Serena Owners Coalition v. Costa Serena Architectural Com.* (2009) 175 Cal.App.4th 1175, 1205-1206 (*Costa Serena*).) "When the court cannot grant *effective* relief to the parties to an appeal, the appeal must be dismissed." (*In re I.A.,* at p. 1489; *Costa Serena,* at p. 1206.)

Father challenges the jurisdictional finding under section 300, subdivision (a) regarding his past domestic violence against mother. Specifically, he argues the evidence was insufficient to find that any past domestic violence incident had resulted in, or posed a substantial risk of nonaccidental harm to the children.[3] Notwithstanding this contention, father tacitly concedes there was sufficient evidence to sustain the domestic violence finding under section 300, subdivision (b).[4] Moreover, father does not challenge any of the other findings that individually authorized the juvenile court's assumption of dependency jurisdiction. Father's inability to challenge those findings effectively renders this portion of his appeal nonjusticiable.

"When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, 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 such a case, the reviewing court need not consider whether any or all of the other alleged

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[3] Section 300, subdivision (a) authorizes dependency jurisdiction where there is evidence that a 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."

[4] Section 300, subdivision (b) authorizes dependency jurisdiction where there is evidence that a 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."

statutory grounds for jurisdiction are supported by the evidence." (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; *In re Ashley B.* (2011) 202 Cal.App.4th 968, 979 ["As long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate"].) Thus, as a general matter, unless all bases for the juvenile court's assumption of jurisdiction are challenged, an appellate court order "will have no practical impact on the pending dependency proceeding, thereby precluding a grant of effective relief." (*In re I.A., supra,* 201 Cal.App.4th at p. 1491.)

The general rule notwithstanding, this court has recognized there may be exceptional circumstances that warrant discretionary consideration of an otherwise nonjusticiable appeal. Those circumstances are limited to instances where the challenged finding "(1) serves as the basis for 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 [citations]; or (3) 'could have other consequences for [the appellant], beyond jurisdiction.' " (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.) None of these exceptional circumstances is present here.

While father does challenge the visitation aspect of the disposition order, he has not demonstrated that the juvenile court's ruling was premised on the challenged domestic violence finding, as opposed to the several other jurisdictional findings that father tacitly concedes were proper. Nor has father presented any argument or evidence to demonstrate that the challenged finding will impact the current or future dependency proceedings, or that it will have some other consequence beyond

jurisdiction. Indeed, because father does not challenge the other physical abuse findings related to striking Andrew with a belt, we fail to see how reversal of the challenged domestic violence finding could have any legal or practical impact on father's rights whatsoever. (See, e.g., § 361.5, subd. (b) ["[r]eunification services need not be provided to a parent . . . when the court finds, by clear and convincing evidence, . . . [¶] . . . [¶] (3) [t]hat the child or a sibling of the child has been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of *physical . . . abuse*," italics added].)

All told, because father does not challenge the numerous other findings that authorized dependency jurisdiction, any decision we might render on the challenged finding will not result in effective relief. We therefore conclude father's challenge to the jurisdiction finding is not justiciable, and we decline to exercise our discretion to address it. (See, e.g., *In re I.A., supra,* 201 Cal.App.4th at pp. 1493-1495.)

2. *The Evidence Supports the Juvenile Court's Finding that Physical Visitation with Father Would Have Been Detrimental to the Children's Emotional Well-Being*

Father contends the evidence was insufficient to support the juvenile court's order denying him physical visitation and restricting his contact with the children to monitored telephone calls. Based on father's anger management issues, the children's accounts of father blaming and threatening them over the pending dependency proceeding, and father's failure to take steps to address these issues, the court found physical visitation would have been detrimental to the children's emotional well-being. We conclude detriment to a child's emotional well-being is an

appropriate basis for denying physical visitation and that the evidence supported the court's finding.

"Visitation between a dependent child and his or her parents is an essential component of a reunification plan, even if actual physical custody is not the outcome of the proceedings." (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580.) Under the controlling statute, visitation "shall be as frequent as possible, consistent with the well-being of the child." (§ 362.1, subd. (a)(1)(A).) However, "[n]o visitation order shall jeopardize the safety of the child." (§ 362.1, subd. (a)(1)(B).) "It is ordinarily improper to deny visitation absent a showing of detriment." (*In re Mark L.,* at p. 580; *In re Luke L.* (1996) 44 Cal.App.4th 670, 679; *In re David D.* (1994) 28 Cal.App.4th 941, 954.)

As the court recently observed in *In re T.M.* (2016) 4 Cal.App.5th 1214, "there is a split of authority over whether section 362.1 authorizes the denial of visitation only on a finding of a threat to the minor's physical safety (*In re C.C.* [(2009)] 172 Cal.App.4th [1481,] 1491-1492), or whether courts may also deny visitation based on potential harm to the minor's emotional well-being (see, e.g., *In re Mark L., supra,* 94 Cal.App.4th at p. 581)." (*In re T.M.,* at p. 1219.) After analyzing the operative statutory language, the *In re T.M.* court joined several other appellate tribunals that have concluded juvenile courts may deny visitation based on potential harm to either a minor's physical safety *or* emotional well-being. (*Ibid.*; see, e.g., *In re Mark L., supra,* 94 Cal.App.4th at p. 581; *In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1357; *In re Julie M.* (1999) 69 Cal.App.4th 41, 50; *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008.)

The *In re T.M.* court explained: "In addition to requiring a court to deny visitation if the child's safety is at risk, the plain language of section 362.1, subdivision (a) only requires visitation as frequently as the well-being of the child allows. Accordingly, if visitation is not consistent with the well-being of the child, the juvenile court has the discretion to deny such contact. . . . [¶] [Reading section 362.1 to embrace emotional health] is consistent with dependency law's guiding principle of the well-being of the child: 'While visitation is a key element of reunification, the court must focus on the best interests of the children "and on the elimination of conditions which led to the juvenile court's finding that the child has suffered, or is at risk of suffering, harm specified in section 300." [Citation.]' [Citations.] Indeed, if, as [the contrary reading] suggests, the juvenile court lacked the power to suspend visits when continuing them would be harmful to a child's emotional well-being, the court 'would be required to sit idly by while a child suffered extreme emotional damage caused by ongoing visits. . . . Visits of that nature are hardly consistent with the well-being of the children.' " (*In re T.M., supra,* 4 Cal.App.5th at pp. 1219-1220.) We agree with this analysis, and join those courts that interpret "well-being" in section 362.1 to include both the child's emotional and physical health. (*Id.* at p. 1219.)

Father argues the evidence was insufficient to support the juvenile court's detriment finding. In support of the contention, father cites excerpts from the detention report describing "a statement by Mother that the children loved Father, although he sometimes intimidated Mia and was 'controlling' " as well as a statement by Mia to the effect that she "hardly got in trouble at Father's house [and] did not do much during her visits but

enjoyed [them]." Father also stresses that the court "did not order conjoint therapy for the children when the court 'temporarily' revoked Father's visits." None of these points establishes reversible error.

" 'In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, *whether or not contradicted*, which will support the conclusion of the trier of fact.' " (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820, italics added; *In re Alvin R.* (2003) 108 Cal.App.4th 962, 971 (*Alvin R.*).) Here, the Department's reports showed both children had sincere anxiety about visiting with father, stemming largely from his temper and anger with them over their perceived role in the pending dependency proceedings. The juvenile court emphasized Mia's report that father blamed her for speaking honestly to the social worker about the altercation at her graduation, and Mia explained that she was increasingly "scared and nervous" around father due to his "threats." Andrew expressed a similar level of emotional anxiety when he reported he did not want to return to father's home because " 'he will just yell.' " And father's history of domestic violence, his use of a belt to strike Andrew, and his disturbing public conduct at Mia's graduation all served to reinforce the court's inference that, even in a monitored setting, father's anger could spark and cause significant emotional harm to the children. Thus, notwithstanding the ostensibly contrary evidence father relies upon, there was sufficient evidence to support the court's finding that, until father's anger management issues were addressed, physical visitation would be detrimental to the children's emotional well-being.

Father also seems to argue the juvenile court could not continue to restrict physical visitation with the children because it had not ordered conjoint counseling after the initial detention. While he does not explain the connection to the instant case, father appears to rely upon *Alvin R.* for the supposed proposition. The case is inapposite.

The father in *Alvin R.* challenged the juvenile court's finding that reasonable reunification services had been provided in advance of the six-month review hearing. (*Alvin R., supra,* 108 Cal.App.4th at p. 965.) The juvenile court had assumed jurisdiction over the child upon a sustained finding that father physically disciplined him with a belt. (*Id.* at p. 966.) Father was ordered to complete a parenting class and individual counseling, and the child was likewise ordered to complete eight individual counseling sessions before both would commence conjoint counseling. (*Id.* at p. 967.) Father completed the parenting class and was engaged in individual counseling, but the child had not attended the prescribed individual counseling sessions for reasons outside the father's control. The child resisted visitation with the father due to the history of abuse. (*Id.* at pp. 967-969.)

The *Alvin R.* court ruled the child welfare agency's failure to ensure the child attended individual counseling, and the apparent effect the lack of counseling had on the child's willingness to visit with father, conclusively undermined the juvenile court's reasonable services finding. (*Alvin R., supra,* 108 Cal.App.4th at pp. 971-972.) Critically, the appellate court observed, "Father had done all that was required of him under the plan. Thus, *one* service, getting [the child] into eight sessions of individual therapy, stood in the way of all measures remaining under the reunification plan, and the [agency] submitted no

evidence of having made a good faith effort to bring those sessions about." (*Id.* at p. 973.)

In stark contrast to the facts of *Alvin R.*, the record shows father had done *nothing* at the time of the disposition hearing to address the underlying problems that warranted court intervention. Indeed, as the juvenile court observed in rendering its visitation ruling, father continued to blame everyone but himself for the family's problems and the children's emotional state, he had not enrolled in prescribed programs in advance of the hearing, and he expressed an unwillingness to do so, explaining to the Department that he had " 'other things he need[ed] to pay for.' " The children's emotional anxiety stemmed from father's anger management issues, and the juvenile court had no reason to conclude their anxiety would be assuaged by conjoint counseling until father complied with the court-ordered steps to address those issues.

Consistent with the court's recognition that father needed to take responsibility to repair the relationship with his children, the court authorized the Department to liberalize visitation when appropriate as father progressed with his case plan. We find no error in the court's ruling.

DISPOSITION

The disposition order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

JOHNSON (MICHAEL), J.*

We concur:

EDMON, P. J.

LAVIN, 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.