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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re I.G., et al., Persons Coming Under the Juvenile Court Law	B289660
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,  Plaintiff and Respondent,  v.  JAMES B.,  Defendant and Appellant.	(Los Angeles County Super Ct. No. 17CCJP00002 B&C)

APPEAL from an order of the Superior Court of Los Angeles County, Natalie Stone, Judge. Reversed in part and dismissed in part.

Jacques Alexander Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel and Tracey F. Dodds, Deputy County Counsel for Plaintiff and Respondent.

## INTRODUCTION

James B. appeals from the juvenile court's jurisdiction findings declaring his children, seven-year-old Imani G. and six-year-old Natalia G., dependents of the juvenile court under Welfare and Institutions Code section 300, subdivision (b),<sup>1</sup> and the court's disposition orders removing his children from his physical custody and requiring him to complete a domestic violence course and parenting classes. James argues that substantial evidence does not support the juvenile court's jurisdiction findings and that some of the disposition orders do not relate to the conditions that led the court to assert jurisdiction.

We conclude that, even though the juvenile court terminated jurisdiction during the pendency of this appeal, the appeal from the jurisdiction findings is not moot and that those findings are not supported by substantial evidence. We also conclude that, because the final custody orders entered at the time the juvenile court terminated jurisdiction superseded the disposition orders, the appeal from the disposition orders is moot.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. *Petition and Detention*

On August 7, 2017 the Los Angeles County Department of Children and Family Services received a referral that domestic violence between Teresa G. and her ex-boyfriend, Genaro A., was

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

causing Teresa's children, Imani and Natalia, to suffer emotional harm. The Department learned Genaro forced his way into Teresa's house, pinned Teresa to the sofa, grabbed her face, and squeezed her cheeks until she began to cry. The Department also learned of another incident of domestic violence that occurred the previous month.

On September 5, 2017 the Department filed a petition under section 300 alleging that the history of domestic violence between Teresa and Genaro endangered the children's physical health and safety under section 300, subdivisions (a) and (b). The juvenile court detained Imani and Natalia.

#### B. *Investigation*

During its investigation into the physical violence by Genaro, the Department learned Teresa had been a victim of domestic violence in a previous relationship, with James, from 2010 to 2012. The Department obtained a police report stating that on August 23, 2010 James physically assaulted Teresa while she was holding Isaias, the older brother of Imani and Natalia,<sup>2</sup> and threatened her by saying, "You'll be dead before you leave me." Teresa told the police she believed James was "capable of carrying the threat out." The police documented a second incident that occurred on September 30, 2010, where James repeatedly called Teresa, asked if he could see her, and threatened that, if she did not allow him to see her, he would kill her and take her son. James later went to Teresa's apartment, banged on her front door, broke the screen to her window, and yelled, using gang slang, "On Watts Hat Gang Crips I'm gonna

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<sup>2</sup> Isaias was a party to the dependency case but is not a party to this appeal.

get in there.” The police documented a third incident of domestic violence that occurred on May 4, 2012, where James, in the presence of Imani and Natalia, grabbed Teresa by the back of her head and pushed her head into a door, causing a “visible welt” to her forehead.

C. *Amended Petition and Additional Evidence*

When the Department filed the original petition, the Department did not know where James was. When the Department located James, it filed an amended petition adding allegations against him. The Department alleged James and Teresa had a history of domestic violence that endangered the physical safety of the children. The Department also alleged James had a history of substance abuse and a long criminal record, both of which endangered the children.

At a hearing to determine the paternity of Imani and Natalia, James testified that he and Teresa ended their relationship in 2013, but that he continued to share responsibility for taking care of Imani and Natalia until August 2016. Natalia stayed with James during the day while Imani and Isaias attended school. James picked up Imani and Isaias from school and brought them to his house, where Teresa picked them up after work.

The Department stated in a last minute information report that, during a monitored visit in February 2018, Imani and Natalia “refuse[d] to get near” James and had “minimal conversations with him” and that, “[a]fter this visit, the children . . . showed symptoms of anxiety when told they have to go visit with [him].” Imani and Natalia refused to attend the next scheduled visit with James. The Department reported Imani and Natalia “began to show symptoms of anxiety, enuresis and lack of focus at school” after their visits with James.

D. *The Jurisdiction and Disposition Hearing*

At the jurisdiction and disposition hearing, James argued the history of domestic violence with Teresa was limited to 2010 to 2012, his criminal convictions were more than 10 years old, and the Department had not introduced any evidence his marijuana use endangered the children. Teresa argued that, although the domestic violence with James occurred years ago, his recent conduct indicated he still “pose[d] a risk to the children.” Teresa pleaded no contest to the allegations in the petition concerning her history of domestic violence with Genaro.

The juvenile court sustained the allegation that the history of domestic violence between Teresa and James in the presence of Imani and Natalia endangered the children’s physical safety, and the court declared the children dependents of the court under section 300, subdivision (b). The court found that it was “clear that there is a great deal of hostility between [James and Teresa]” and that there was no evidence James completed any domestic violence prevention programs. The court struck the remaining allegations.

Concerning disposition, Teresa testified she had completed individual counseling, 22 sessions of a domestic violence course, and a parenting class, and through those programs had “learned not to be passive, to be assertive, not to be afraid, to have better self-esteem, to recognize red flags.” Teresa also testified James’s behavior during the court proceedings put her “in fear of him.” Teresa elaborated: “Every time I’ve been in court, [James] has followed me, . . . walked up to me when I go to the restroom, . . . sat next to me and my attorney . . . just giving me dirty looks.” Counsel for the children argued “the children have expressed real fear and concerns to the social worker in regards

to even resuming monitored visitations with [James].” James argued the Department had not met its burden of proving by clear and convincing evidence that the history of domestic violence would still pose a risk to the children, and he asked the court to place the children with him.

The court granted Teresa physical custody of Imani and Natalia, observing that, even though “she may not have been totally truthful about everything in her testimony today, . . . she has done the programs, she’s been having unmonitored visits that have gone well, she’s totally devoted to the children, and . . . she’s understanding that she can’t have the children around violence like this anymore.” The court found “by clear and convincing evidence that it would be detrimental to place the children in [James’s] custody based on . . . a current risk and the children still having fear . . . .” The court stated that it “notice[d] [James] kind of mad-dogging [Teresa] while she was on the [witness] stand” and that he was “staring at her.” The court acknowledged James may have been “upset” with Teresa’s testimony because he may have felt “she was trying to keep the kids [away] from [him]” and was “not being truthful.” The court stated it understood “why [James] would feel upset about that.” The court ordered James to complete a 26-week domestic violence course, take a parenting class, submit to random weekly drug testing, and have monitored visitation with the children in a therapeutic setting.<sup>3</sup> James objected to the court’s order: “I’m just not understanding why I’m being so much penalized. And my kids [are] not in the

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<sup>3</sup> James does not challenge the orders requiring him to submit to random weekly drug testing and restricting his visits with his children to a monitored, therapeutic setting.

situation due to my tomfoolery or poor decisionmaking. It was their mother's tomfoolery and poor decisionmaking." The court acknowledged James's frustration: "I understand how you could feel that way. [Teresa is] the one who had the domestic violence with this other man." James timely appealed the jurisdiction findings and disposition orders.

On May 17, 2019, while this appeal was pending, the juvenile court terminated jurisdiction and issued exit orders granting Teresa sole legal and sole physical custody of Imani and Natalia and authorizing James to have monitored visitation in a therapeutic setting after he completed anger management classes and individual counseling.<sup>4</sup> James did not appeal from the juvenile court's order terminating jurisdiction or from the orders requiring him to complete anger management classes and individual counseling.

## DISCUSSION

James argues the juvenile court's termination of jurisdiction does not moot his appeal. James also argues that "the evidence did not support the court's jurisdictional findings" and that the disposition orders "were not designed to eliminate

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<sup>4</sup> Under section 362.4, when a juvenile court terminates jurisdiction over a case, it may "issue an order 'determining the custody of, or visitation with, the child,'" which "may be enforced or modified by the family court." (*In re Ryan K.* (2012) 207 Cal.App.4th 591, 594, fn. 5.) Such an order is "sometimes referred to as 'family law' orders or 'exit' orders." (*Ibid.*) We take judicial notice of the exit orders in this case under Evidence Code sections 452, subdivision (d), and 459.

the conditions that led to dependency.” The Department argues that James’s appeal is moot because the juvenile court has terminated jurisdiction and that, because Teresa has not challenged the court’s jurisdiction findings, James’s appeal is not justiciable.

We conclude that the appeal from the jurisdiction findings is not moot, but that the appeal from the disposition orders is.<sup>5</sup> On the merits, we conclude that, because substantial evidence did not support the juvenile court’s jurisdiction findings as to James, those findings must be reversed.

A. *The Appeal from the Jurisdiction Findings Is Not Moot But the Appeal from the Disposition Orders Is*

“An appellate court will dismiss an appeal when an event occurs that renders it impossible for the court to grant effective relief.” (*In re N.S.* (2016) 245 Cal.App.4th 53, 58-59.) “As a general rule, an order terminating juvenile court jurisdiction renders an appeal from a previous order in the dependency proceedings moot. [Citation.] However, dismissal for mootness in such circumstances is not automatic, but ‘must be decided on a case-by-case basis.’ [Citations.] ‘An issue is not moot if the purported error infects the outcome of subsequent proceedings.’” (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488; see *In re Daisy H.* (2011) 192 Cal.App.4th 713, 716 “[t]he court’s termination of jurisdiction does not . . . moot Father’s appeal” because the “court’s jurisdictional findings as to Father, if erroneous, could

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<sup>5</sup> We do not address the Department’s argument that, even if James’s appeal from the jurisdiction findings is not moot, it is not justiciable because the juvenile court properly asserted jurisdiction over Imani and Natalia based on Teresa’s conduct. The juvenile court has terminated that jurisdiction.



have severe and unfair consequences to Father in future family law or dependency proceedings”]; *In re J.K.* (2009) 174 Cal.App.4th 1426, 1431-1432 [“Father’s challenge to the jurisdictional findings is not moot” because “the sustained jurisdictional findings against Father have had an adverse effect on his custody rights”]; *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548 [“[t]he fact that the dependency action has been dismissed should not preclude review of a significant basis for the assertion of jurisdiction where exercise of that jurisdiction has resulted in orders which continue to adversely affect appellant”]; cf. *In re N.S.*, at p. 61 [appeal was moot because “[the mother] has been awarded custody of [her child], and the jurisdictional findings are not the basis of any current order that is adverse to her”].)

James argues he “has been prejudiced by the juvenile court’s ruling” because “the juvenile court . . . used [the] jurisdictional [findings] and dispositional rulings to issue an exit order.” We agree with James the juvenile court’s jurisdiction findings—that the history of domestic violence between James and Teresa endangered the physical safety of Imani and Natalia—have adversely affected James’s custody rights. The juvenile court took judicial notice of the “previously sustained petition” (which found true the danger posed by the history of domestic violence between James and Teresa) before issuing the exit orders granting Teresa sole legal and sole physical custody of the children. Because James no longer has custody over his children, due at least in part to the jurisdiction findings, the appeal from the jurisdiction findings is not moot. (See *In re J.K.*, *supra*, 174 Cal.App.4th at pp. 1431-1432; *In re Joshua C.*, *supra*, 24 Cal.App.4th at p. 1548.)

That James did not appeal from the orders terminating jurisdiction does not moot this appeal because in the

circumstances of this case we can grant him some effective relief. (See *In re N.S.*, *supra*, 245 Cal.App.4th at p. 60 [“the critical factor in considering whether a dependency appeal is moot is whether the appellate court can provide any effective relief if it finds reversible error”]; *In re Cristian I.* (2014) 224 Cal.App.4th 1088, 1096, fn. 6 [although the parent did not appeal the order terminating dependency jurisdiction, the appeal was not moot “because the disposition order continues to adversely affect her”].) The juvenile court’s exit orders “continue until modified or terminated by a subsequent order of the superior court” (§ 362.4, subd. (b)) and may not “be modified . . . unless the court finds that there has been a significant change of circumstances since the juvenile court issued the order and modification of the order is in the best interests of the child.” (§ 302, subd. (d); see *In re A.R.* (2009) 170 Cal.App.4th 733, 740 [to overcome restrictions on custody and visitation, a parent must “prove, in family court, that ‘there has been a significant change of circumstances . . . and modification of the order is in [the child’s] best interests’”]; *In re Joshua C.*, *supra*, 24 Cal.App.4th at p. 1548 [relief from or modification of custody and visitation orders entered upon termination of the dependency proceedings “is based on the best interest of the child and may be sought either in a pending family law action or, if none is pending, a new action based solely on the orders”].) If we reverse the juvenile court’s jurisdiction findings, James may be able to use our opinion invalidating those findings to seek a modification in family court of the final custody orders based on a “significant change of circumstances.”<sup>6</sup>

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<sup>6</sup> Although we conclude the appeal from the jurisdiction findings is not moot, the better practice would have been for James to have appealed the juvenile court’s order terminating

While we can grant James effective relief in his appeal from the jurisdiction findings, the same is not true with respect to James's appeal from the disposition orders. The juvenile court's custody orders at termination have superseded the original disposition orders and are no longer in effect. (See *Heidi S. v. David H.* (2016) 1 Cal.App.5th 1150, 1165 ["the exit order 'shall be a final judgment and shall remain in effect after [the juvenile court's] jurisdiction is terminated'"].) The original disposition orders no longer adversely affect James, and we cannot grant him any relief from orders that no longer exist. (See *In re E.T.* (2013) 217 Cal.App.4th 426, 436 ["[a]n appeal may become moot where subsequent events, including orders by the juvenile court, render it impossible for the reviewing court to grant effective relief"].)

B. *Substantial Evidence Did Not Support the Jurisdiction Finding*

1. *Applicable Law and Standard of Review*

Section 300, subdivision (b)(1), authorizes the juvenile court to assert jurisdiction where the social services agency proves by a preponderance of the evidence that the child "has suffered' serious physical harm as a result of the failure or

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jurisdiction. (See *In re Michelle M.* (1992) 8 Cal.App.4th 326, 330 [where the parent has not appealed from the order terminating jurisdiction and the order has become final, "no direct relief can be granted . . . because the juvenile court no longer has jurisdiction and we are only reviewing that court's ruling"].) Because James did not appeal from the orders at termination requiring him to complete anger management classes and individual counseling, those orders are now final and cannot be challenged.

inability of his or her parent to adequately supervise or protect the child” or that “there is a substantial risk’ the child will suffer serious physical harm as a result of the failure or inability of his or her parent to adequately supervise or protect the child.” (*In re Rebecca C.* (2014) 228 Cal.App.4th 720, 724; accord, *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383; see *In re M.R.* (2017) 7 Cal.App.5th 886, 896 [“‘[t]he petitioner in a dependency proceeding must prove by a preponderance of the evidence that the child . . . comes under the juvenile court’s jurisdiction’”].) “Although section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing [citations], the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. [Citation.] The court may consider past events in deciding whether a child currently needs the court’s protection. [Citation.] A parent’s “[p]ast conduct may be probative of current conditions” if there is reason to believe that the conduct will continue.” (*In re Kadence P.*, at pp. 1383-1384; accord, *In re T.V.* (2013) 217 Cal.App.4th 126, 133.)

“In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings . . . , we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.’ [Citation.] . . . “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is

appropriate].”””” (In re I.J., supra, 56 Cal.4th at p. 773; accord, In re D.L. (2018) 22 Cal.App.5th 1142, 1146.)

“Physical violence between a child’s parents may support the exercise of jurisdiction under section 300, subdivision (b) but only if there is evidence that the violence is ongoing or likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm.” (In re Daisy H., supra, 192 Cal.App.4th at p. 717.) “While past harmful conduct is relevant to the current risk of future physical harm to a child [citations], the evidence as a whole must be considered. ‘[P]revious acts of neglect, standing alone, do not establish a substantial risk of harm . . . .’” (In re J.N. (2010) 181 Cal.App.4th 1010, 1025.) “To establish a defined risk of harm at the time of the hearing, there ‘must be some reason beyond mere speculation to believe the alleged conduct will recur.’” (In re Yolanda L. (2017) 7 Cal.App.5th 987, 993.)

2. *Substantial Evidence Did Not Support the Juvenile Court’s Finding of a Substantial Risk of Harm from Domestic Violence by James*

There was no substantial evidence the domestic violence that occurred six years ago between Teresa and James was “ongoing or likely to continue.” (In re Daisy H., supra, 192 Cal.App.4th at p. 717.) The Department cites three police reports documenting domestic violence over a two-year period during 2010-2012, James’s attempt to intimidate Teresa in the courtroom during the dependency proceedings, and the children’s reluctance to see James. But none of this evidence, most of it stale, showed that domestic violence between Teresa and James was “ongoing” or “likely to continue.” James and Teresa separated in 2013, after which James continued to care for the children for part of the day while Teresa worked, and there was

no evidence of domestic violence between them during this period. James remained out of Teresa's life from August 2016 to the end of 2017, when the Department brought James into the dependency proceeding after the children came to the Department's attention because of domestic violence between Teresa and Genaro.

While James's courtroom behavior may have been inappropriate, it was not, without more, substantial evidence of an actual or likely occurrence of domestic violence that currently posed a risk to the children. (See *In re Jesus M.* (2015) 235 Cal.App.4th 104, 113 ["a current pattern of harassing [the mother] in flagrant disregard of the restraining order . . . did not demonstrate a risk of physical harm to the children justifying the assertion of jurisdiction under subdivision (b) of section 300"].) Although James displayed anger and hostility toward Teresa in court, the juvenile court found James understandably felt frustrated because his involvement in the dependency system began, not because of anything he did or failed to do, but because of Teresa's volatile relationship with Genaro.

Nor was the children's reluctance to see James substantial evidence of a current risk of domestic violence that would endanger the children. As discussed, despite James's recent reappearance in his children's lives, there had been no recurrence of the domestic violence since 2012. Although the Department presented evidence showing James still harbored anger toward Teresa, the Department did not introduce evidence that James would resort to violence. (See *In re Jesus M. supra*, 235 Cal.App.4th at p. 113 [past domestic violence did not support jurisdiction finding because "there was no evidence of current violent behavior"]; cf. *In re M.M.* (2015) 240 Cal.App.4th 703, 720 [evidence of recent and repeated incidents of domestic violence supported the juvenile court's finding "that domestic violence was

an ongoing problem for mother and father”]; *In re R.C.* (2012) 210 Cal.App.4th 930, 944 [acts of violence after the parents’ separation supported jurisdiction under section 300, subdivision (b)].) To the contrary, after their separation James and Teresa managed to coordinate childcare responsibilities for Imani and Natalia, and there was no evidence of any domestic violence or risk of danger during this period.

### **DISPOSITION**

The jurisdiction findings against James are reversed. The appeal from the disposition orders is dismissed.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.