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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JULIAN J. et al., Persons Coming  
Under the Juvenile Court Law.

B245214  
(Los Angeles County  
Super. Ct. No. CK95452)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

TIMOTHY J.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Philip Soto,  
Judge. Affirmed in part and reversed in part.

Eva E. Chick, under appointment by the Court of Appeal, for Defendant and  
Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and  
Kimberly A. Roura, Associate County Counsel, for Plaintiff and Respondent.

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Appellant Timothy J. (father) challenges the juvenile court's findings and order under Welfare and Institutions Code section 300, subdivisions (b) and (c).<sup>1</sup> He also challenges the removal of the children, Julian J. (Julian, born Feb. 2003) and Destiny J. (Destiny, born Oct. 2004), from his custody and his name being listed in the Child Abuse Central Index (CACI).

The Department of Children and Family Services (DCFS) concedes that there was insufficient evidence to support jurisdiction over the children under section 300, subdivision (b), and we agree. As a result, we reverse the juvenile court's finding under that statutory subdivision and the concomitant order removing Destiny from father's custody. However, substantial evidence supports the juvenile court's findings and order removing Julian from father's custody under section 300, subdivision (c).

Regarding the CACI, father must pursue the established administrative grievance process, as set forth in Penal Code section 11169, subdivision (d), and state regulations.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### *Detention Report and Hearing*

On June 4, 2012, DCFS received a referral alleging that Julian told his mother, Julieanne C. (mother), on June 1, 2012, that in March 2012, when the children were visiting father, father asked Julian whether he wanted to live with him. Julian said “No.” Father then took Julian into a bedroom and shut the door. Father pulled out a pocket knife and showed it to Julian and asked him again whether he wanted to live with him. Julian was scared, but again said, “[n]o.” This referral was closed as “[i]nconclusive” before the social worker was able to contact Julian's therapist.

On August 2, 2012, DCFS received another referral, this time alleging general neglect by mother; this referral was closed as “[u]nfounded.” In the process of investigating this referral, the social worker was able to speak with mental health professionals who had had ongoing contact with Julian.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

The social worker spoke with Julian on June 8, 2012. When asked if he liked visiting father, Julian replied, “A little bit.” When asked why just “a little bit,” he responded “I don’t know.” Regarding what he liked about visiting father, Julian stated, “Playing basketball, going places and stuff, watching TV, playing games, playing outside, and that’s all.” As for what Julian did not like, he said, “Sometimes, nothing, I just, I don’t know.” Julian shook his head when asked if anything scary ever happened at father’s home. Julian preferred to live with mother “[b]ecause it’s nice [t]here and [he] love[s] watching TV. [Mother] always cooks good food and [gives] us stuff and [drives] us to school and [takes] us to the store.” Father did those things “[a] little bit.”

The social worker then asked Julian if father had a knife; Julian responded that he did—a pocket knife. The social worker asked what happened with the pocket knife. Julian reported that father had asked him whom he wanted to live with and, at the time he asked, he was rubbing the knife over his thumb like he was sharpening it. Julian was “scared” because he thought father “was going to cut himself or something.” That only happened once, and although Destiny was not in the room, she was in the house at the time. After Julian told father that he wanted to live with mother, father said okay. Julian denied that father had ever done anything else that scared him.

The social worker informed father of the allegations over the phone on July 31, 2012. Father was very upset and began talking so fast that the social worker interrupted him to slow him down, but father sped up again and the social worker could not take note of everything he said. Father said that he had never owned a pocket knife. He said that he had had a licensed gun, but the children did not know about it. Father said that he did not see the children in March 2012. He said that Julian had not been able to tell him the color of the alleged knife.

During Julian’s most recent visit, father’s other children told Julian that father would never have done what Julian alleged. Father became more upset and stated that he had never had a referral filed against him with a child protective agency. Father became angrier and finally hung up on the social worker.

The social worker spoke with Julian again on August 22, 2012. The social worker asked if anything had happened during the most recent visit with father that upset Julian, and Julian replied, “[y]es.” Julian stated: “‘When I went over there, he was yelling at me about the knife [be]cause my mom said she believed me and he was just mad.’” Julian did not remember what father had said, and father’s other children did not say anything to him about the knife incident. When asked if he liked visiting father, Julian said, “‘Yes and no,’” explaining, “‘[the yes because father] always lets [them] play and stuff and the no is because he keeps talking about the knife to me and yelling.’”

When asked how father disciplines him, Julian said that father had him stand in the corner “‘[u]ntil [his] leg hurts.’” After that, he has “‘to stay in the corner one more minute.’” Father did not punish him any other way, and the other children were punished the same way.

Destiny said that she liked going to father’s home and shook her head when asked if anything scary happened there. She said father and Julian did not get along. She told the social worker that father was mad at Julian “‘for telling a lie,’” although she did not know what the lie was about.

On September 4, 2012, the social worker spoke over the telephone with Lisa Carr, a psychiatric social worker at Julian’s elementary school. Ms. Carr stated that Julian is the “‘sweetest boy”” but that “‘there’s a lot that he’s affected by.”” She had referred Julian for further services through Hathaway-Sycamores Child and Family Services (Hathaway) at the end of the previous school year and had not followed up since then, as she was only at the school once a week. Julian recently went to her office to visit.

Ms. Carr noted that Julian was “‘very, very distracted, very difficult to concentrate in class. Very little work production. He’s easily angered—well, he can be irritable with the other kids. I think he was having some sleeping problems, if I remember. He reports feeling sad, he has a sad affect, he constantly wears his hood in class. A lot of these did improve, but this was my experience with him in third grade.”” Ms. Carr believed that father was the more responsible parent.

That same day, the social worker spoke with Armida Gomez, a youth specialist at Julian's school. Ms. Gomez stated that Julian was willing to participate, but that he did not "speak much about what's going on at home. [Mother had] told me some issues about what's going on with father." When asked what Julian had said about father, Ms. Gomez replied: "He's kind of shy at times. He seems pretty reserved. He still won't bring it up." But, Julian had "said there was an incident about a month ago when he was at his father's house and the father was asking everyone if they believed Julian's story." Julian told Ms. Gomez that he was "really uncomfortable and embarrassed" and that he began to cry when it occurred. Last, Ms. Gomez noted that Julian "likes to have fun, but when it comes to his family, he doesn't talk much. He's such an awesome kid. Mom has always been good, she's been awesome and always makes sure he's in contact with us."

On September 5, 2012, the social worker spoke with Julian again. She explained that she wanted to ask him something regarding father, but emphasized that if he did not want to talk about it, that would be okay; and, it would be okay if he wanted to talk at first, but then changed his mind. The social worker asked Julian if he would be willing to talk about exactly what had happened with father and the knife. Julian said no, so the social worker did not pursue the topic.

Next, the social worker spoke on the telephone with Julian's therapist, Sandra Erdelac. Ms. Erdelac said that she first saw Julian on June 5, 2012, and that he had been on a waiting list for a while. She had weekly sessions with Julian, except the time that Julian was visiting father. The therapist stated that father "didn't want him to have therapy. He expressly said [that] he did not want him to have therapy. He didn't tell me. He actually told the agency." The agency (Hathaway) was doing a study in which father originally agreed to participate, but when father was contacted, "he told that person that he didn't want anyone calling his home and he didn't want Julian in therapy anyway."

Ms. Erdelac described Julian as "very active" and "[a] pretty intelligent kid for his age." She could not disclose Julian's diagnosis without first verifying that she was authorized to do so by mother.

As for what Julian had told his therapist about the incident involving father and a knife, Ms. Erdelac stated, “His dad had taken him into a separate room away from his other siblings and used intimidation to threaten him. He said he held a knife kind of at his (father’s own) side and kind of poked himself with the knife when he said he wanted to stay with his mother and then kind of put the knife at his side or on the table and asked again and Julian didn’t know what to say, so he said nothing. He was pretty scared.” The therapist added: “He felt threatened by it. He was intimidated and threatened by it.”

When asked what effect the incident had on Julian, the therapist stated, “He seems really frightened. He’s really uneasy about what to say about his dad or to his dad. He has to say [whatever] he has to to make his dad happy so that he feels safe enough.” She continued, “I would definitely say that an incident like that would make his symptoms worse. When they think they’re not worthy of being treated well and they’re treated badly, they tend to blame themselves. A couple sessions ago, he said, ‘I’m still confused because my dad said that it didn’t happen.’” She added: “When his dad told him it didn’t happen, he said his dad asked all the other kids, ‘Do you believe I would do that?’ and it would put pressure to say what the others said.”

Later that day, the therapist called the social worker to report Julian’s diagnosis—Dysthymic Disorder,<sup>2</sup> with a possibly hypomanic episode “down the road.” She would have diagnosed Julian with Post Traumatic Stress Disorder (PTSD), except that she did not know if he was out of danger and she believed that father was the source. The therapist needed Julian to be “hyper-vigilant because he may need to be.”

The social worker informed father by telephone that the children were being detained from him. Father became upset, started complaining about mother, and then said, “I’m ready to be through with this shit” and hung up on the social worker.

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<sup>2</sup> Dysthymic Disorder is a chronic type of depression in which a person’s moods are regularly low.

Father's criminal history revealed three convictions. In 2005, he was convicted of inflicting corporal injury on a spouse or cohabitant; in 2005 and 2011, he was convicted of carrying a loaded firearm in public.

Father also had a prior history with child protective services. In 2001, when father was 16 years old, father and his child's mother were reportedly "playing a tug of war" with their two-month-old infant due to an informal custody battle and were physically pulling the child away from each other. Eventually, the child was removed from the parents' custody; reunification services were terminated; legal guardianship of the child was given to father's mother.

A different social worker contacted mother on September 11, 2012, regarding the upcoming detention hearing. Mother reported that Julian's "personality changed after the incident. The knife incident happened at around February or March. He was having problems in school, the teacher noticed he was arguing in school and not wanting to complete his work. We could not figure out why he was behaving like this until in June when he had to see his dad. He broke down and cried. He told us what happened. He was very scared. He didn't want to tell us because he didn't want to [relive] it. He said he was so scared that he thought his dad was going to cut him. He thought if he did not tell his dad the correct answer, his dad would kill him. He told me: 'But mom, I still told him I want to live with you.' He thought he was going to die. The counseling began after this. He is doing better now, but he is still nervous. This past weekend his dad called to ask for a visit. He looked down, then told me he didn't want to go. His counseling is on Thursdays and I have been taking him for counseling every week."

At the detention hearing on September 12, 2012, the juvenile court found a prima facie case for detaining the children from father and released them to mother. At mother's counsel's suggestion, the juvenile court ordered that the next report address the possibility of terminating jurisdiction with a family law order. Father was granted monitored visits of three hours three times per week.

### *Jurisdiction/Disposition Report*

Mother stated that the family had an existing family law order, in which the family court had ordered joint legal custody, with the children's primary residence to be with mother. Mother said that father was granted unmonitored weekend visits, but that he was inconsistent with visitation.

The dependency investigator left three voicemails for father to schedule an interview regarding the allegations. Father never responded.

#### Father's Discipline Methods

Regarding father's discipline methods, Julian reiterated that father would make him stand in the corner as a "timeout" for several minutes at a time. He said that father would make him stand in the corner for one minute after Julian would complain of leg pain. Julian stated, "He would tell us to go stand in the corner.' 'He says you have to be in the corner for one more minute after you tell him your legs hurt.'" He added, "I stood in the corner two times because I was like messing with the girls . . . the two times I was messing with the girls.'"

Destiny confirmed that father usually punished the children by making them stand in the corner. She said: "He tells us to go in the corner for a long time.'"

Mother said that she was unaware that father used long timeouts, and she never asked the children how father disciplined them. She said, "I didn't know about this (legs hurting).' 'I hadn't heard that until now . . . I actually never asked [Julian;] I've never heard of the kids being in trouble so I didn't ask.'"

#### The Knife Incident

Julian reported that father had called him into a bedroom and produced a small pocket knife right before asking him whether he wanted to reside with father or mother. Julian indicated that father was looking right at him as he asked the question, and father was rubbing the knife back and forth against father's left index finger. Julian said that he told father that he wanted to remain with mother, despite his fear of knives. Father appeared upset at Julian's answer, and asked Julian to get out of the room. Julian said



that this was the only time father had intimidated him by taking out a knife. Julian said that father had called him “crazy,” which hurt his feelings.

Julian further stated, ““You’re here because my dad did like the knife incident.’ ‘He called me to come to his bedroom and then he took out a small knife out of his pocket.’ ‘The bottom of the knife was silver and the bottom was like brown . . . I think it can fold . . . I think it was medium (sized).” “‘[Father] was going like this (moving a pen back and [forth] along his left index finger to demonstrate).’ ‘[Father] said, “Do you want to live with me?” ‘I’m scared of knives but I told him no and he was looking right at me and looked mean.’ ‘Then he said, “You can leave.”” Julian added that father said that Julian was ““crazy;”” Julian was crying ““because I thought I was crazy.’ ‘In the [third] grade he said I was crazy . . . he made me feel like my heart was broken.’ ‘The inside was hurting.’”

Julian continued: ““I was scared . . . I was shivering.’ ‘I didn’t tell my mom about it until the [third] grade. . . . [S]he was mad because she wants to protect me.’ ‘I’m scared to go to his house because I think it might happen again or that he will yell I’m crazy.’ ‘This was the only time he did that.’ [¶] ‘He always yells at my mom . . . about our clothes.’ ‘My dad yells at Nicky . . . (Father’s current wife) [too].’ ‘He doesn’t want to say I’m sorry to me.’”

Destiny stated that she had not witnessed the knife incident; she only knew what Julian told her. She said, ““Julian told me he shut the door and Julian said he pulled a knife out of his pocket and asked him if he wanted to live with him.’ ‘Julian said no and then he told me he just let him go.”” Destiny continued, ““My brother told me about it when he went to my dad’s house.’ ‘I told him I didn’t know anything about it.”” She said that she had not seen a knife or any other weapons at father’s house.

Mother stated that after the February incident with the knife, ““Julian didn’t see him (Father) for nearly three months.’ ‘When he was supposed to see his father in June, Julian looked at me and started breaking down.’ ‘He said he had something to tell me.”” Mother described the incident as follows: ““They were outside playing and he was asked by his father to go into the bedroom.’ ‘[Julian] had seen the knife sitting out and when he

got to the bedroom . . . [father] was already holding the knife.’ ‘[Father] closed the door and Julian told me he was rubbing the knife on his finger.’ ‘[Father] asked Julian if he wanted to live with him or me.’ ‘Julian said he paused and was afraid but said he wanted to live with me.’ ‘Julian told me, ‘I was afraid he was going to cut me.’ ‘He said [father] looked at him and told him to get out of the room.’ ‘He told me he could tell [father] was really mad.’” Mother said, “‘Julian would never tell me why he didn’t want to go until recently.’” Regarding the knife, mother reported, “‘Julian said it was a small knife . . . he said it wasn’t a kitchen knife and said it folds.’ ‘He said he thought it was a pocket knife.’”

Ms. Erdelac confirmed the knife incident had been discussed during sessions, although it was not the primary theme in treatment. The therapist indicated that Julian was intimidated by father and had experienced confusion and anxiety as a result of father’s continued denial of the incident. Julian had described the knife incident during his initial meeting with his therapist on June 5, 2012. Ms. Erdelac made a report to DCFS that day, and was told that another mandated reporter had made a report on June 4, 2012.

#### Mother’s Comments About Father’s Behavior

Regarding father’s later behavior, mother said, “‘It bothers me that he embarrassed Julian in front of the other children.’ ‘Father] put them all together and told them what Julian had said (regarding the knife incident).’ ‘He then asked them if they were afraid of him and the children said no.’”

Mother further reported that father had always owned a gun. In fact, father had intimidated mother and her male companion with a gun on two separate occasions. Regarding the first incident of intimidation with a gun, mother stated, “‘Julian was there when he pulled up in his car right up to us (mother and a female friend).’ ‘He was still inside his car and pulled a gun out and pointed it at my friend Ashley.’ ‘He flipped and said he would shoot her . . . she told him to go ahead and shoot her.’ ‘He started laughing and took off in his car.’ ‘Ashley was standing by the passenger side of my car.’ ‘We

later realized that the gun wasn't loaded . . . he thought it was really funny.” Mother continued, ““I grabbed Julian and had him in my arms when it happened.””

Regarding the second incident, mother stated: ““There was another incident that happened in 2008 at my own place.’ ‘He was bringing Julian home late and both walked into my house.’ ‘He (Father) told my fiancée [that] he needed to talk to him as to why Julian shouldn’t call him dad.’ ‘He went into my bedroom and had the gun pointing like this (pointing to the side).’ ‘I told him to get out of my house . . . my fiancée went to hide in the closet and he (Father) was telling my fiancée to come out.’ ‘That’s when I jumped in front of [father] and told him to get out of the house.’ ‘I called the police but he was gone by the time they showed up.’ ‘I moved to Arizona a month after that.””

Mother said that she had known father since middle school; they began a romantic relationship at age 16. At some point, father became verbally and physically abusive. On one occasion, father slapped mother, dragged her by her hair, and threw her to the kitchen floor. On another occasion, father grabbed mother by the neck and threatened to kill her.

Mother began a relationship with her current male companion in 2005. She described her current partner as a good father; they have three children together.

Mother said that father often instructed Julian and Destiny not to listen to her and not to call mother’s partner dad. She was not surprised by father’s actions because he always had temper issues and often resorted to aggression and intimidation to get his way.

#### Therapist’s Statements About Julian

Father informed Hathaway that he did not want Julian to receive therapeutic services, but Julian continued to receive weekly sessions with his therapist. Julian was engaging, active, and interested during sessions. The therapist said that she would continue to assess and evaluate Julian to determine the most suitable interventions and treatments. She said that Julian wanted to please the adults in his life and made improvements when given support by important adults in his life.

Hathaway had provided school-based services to Julian since June 5, 2012. He had participated in 10 individual sessions and 12 behavioral intervention sessions with a

youth specialist. Julian was not able to participate in telephonic sessions while he was visiting father for three weeks over the summer break because father was opposed to Julian receiving services.

Julian had been diagnosed with Dysthymic Disorder; the therapist opined that father's intimidation of Julian was likely to exacerbate Julian's symptoms. He had told the therapist that he was saddened by father's behavior, and that he just wanted father to express contrition. Julian was not under any medication treatment.

#### Dependency Investigator

The dependency investigator reported that the children stated that they loved father and were open to visitation as long as father addressed his issues. The children wanted to remain with mother. Julian said that he was ambivalent about the prospect of visiting father. Father had not had any visits because he had not contacted DCFS. The investigator opined that immediate termination with a family law order was not in the children's best interests because father did not appear likely to address his issues with anger and intimidation in the absence of court jurisdiction.

#### *Adjudication Hearing*

The juvenile court held the adjudication hearing on October 20, 2012. Father testified first. He said that the children had been visiting him every other weekend prior to DCFS's involvement. He disciplined Julian by having him stand in the corner for two minutes; he looked at a clock to time the two minutes. But, this only happened one time. After the first minute, Julian said that his legs hurt, but father told him that he had one more minute to go and that his legs could not possibly hurt after only two minutes. Destiny had also been disciplined by standing in the corner for two minutes, and she did not complain that her legs hurt.

Furthermore, father said that he did not brandish a pocket knife at Julian; in fact, he did not "own a pocket knife in [his] home." When asked if Julian had ever shown any fear of father, father responded, "No, ma'am. Until recently, it [did not] seem like [he was] fearful[;] he just seem[ed] like he [did not] want to look at me in the eyes."

Father stated that mother moved away with Julian for a year after he was born and father had no contact with mother at all. When Julian was a year old, father started seeing him several times a week, for about a year. Then mother moved away again. Sometime thereafter, father's mother ran into mother, and father began seeing Julian again several times a week until Julian turned three years old. When Julian was three, mother moved to Arizona without telling father. Mother returned from Arizona two years ago, in 2010, and a friend gave father's mother her telephone number. Mother had previously told father that Destiny was not his daughter, but after she returned from Arizona, she said that Destiny was his child.

Father saw the children during the week and on weekends and spoke to them on the telephone daily. In late 2010, mother reunited with her current partner, and father did not see his children again for six months. Mother would not allow him to speak with the children. Then, father went to Legal Aid and got a family law order giving the parents joint custody and granting him visits every other weekend with overnights. He also had two-week alternating visits during school vacations.

Father also testified that he asked the family court to order mother to keep the children away from their maternal uncle. Mother had told him that the uncle was abusive towards the children, and Julian's school counselor had called DCFS and said that Julian was afraid to go home because of the uncle's physical abuse. DCFS told mother to keep the children away from the uncle.

Julian visited father in February 2012. Nothing happened during that visit to cause Julian to be in fear of father, and Julian did not leave the visit crying or saying that he did not want to return. Father sent the children home with clothing and school supplies. Father did not discipline Julian on that visit. He said, "I've never taken . . . Julian into no room by himself, him nor Destiny. When they were with me, they were always around me and my wife and my other children."

Father further testified that he has a five-year-old daughter and an eight-year-old son and that DCFS had never investigated them. He disciplined his daughter by taking

away her dolls or sending her to her room. He sometimes disciplined his son by having him stand in the corner for two minutes.

Father believed that mother was coaching Julian. He said that Julian told him that he did not remember the color of the pocket knife. Father asked Julian, “Well, was the other kids around when this happened?” Julian said that he thought they were in the living room. Father then asked Julian, “If [the other children and father’s wife were] around, wouldn’t they hear me yell at you and tell you to get out of the room?” Julian responded, “I don’t know. I guess.” Father asked Julian about the size of the pocket knife, and father thought that Julian said it was the size of his pinky. “But after that, my wife was right there and also my older son and my other children, and he just came out and said, ‘Dad, I think my mom is making me do this because she wants to move.’ [¶] He just came out and said that.”

On cross-examination, father said that he had never abused a child and had never had a referral called on him. When asked about the incident in 2001 in which father and the mother of his infant child reportedly engaged in a “tug of war” with the child, father said, “I would say, no, I didn’t engage in a tug of war.” Although the report indicated that father had admitted physically pulling the baby from the mother’s arms, father testified, “I deny saying I pulled him away from her, because she had my son in her arms.” He said that the baby turned blue because his mother had pulled him and squeezed him, not father.

Father testified that he did not visit the children in March 2012 because the plumbing in his home was backed up and he did not want the children to visit without water.

Father denied ever owning a pocket knife or a switchblade. He had owned a gun, and he had been convicted twice for carrying a loaded weapon in public.

Father admitted that he had confronted Julian about the allegations when Julian visited in July 2012. Father asked his son, “Julian, did you say that I pulled a pocket knife on you?” Julian replied affirmatively. Father then started asking him what color the knife was, and asked why he would say that father would do something like that.

When father confronted Julian, other people were in the room, including father's wife, father's other three children, Destiny, and two of father's cousins.

Father testified that he would prefer for Julian to stay with mother than to be in his custody. Later, he said that he was referring to his past preferences and that he actually wanted the children in his custody now "because of the mental abuse that's going on" in mother's household.

He did not know that Julian was in therapy, but said that he knew that Julian was seeing a counselor because his uncle had physically abused him. He denied saying that Julian was crazy.

Following father's testimony, counsel presented argument. The children's attorneys both asked that the juvenile court sustain the section 300 petition against father.

After entertaining oral argument, the juvenile court sustained both counts (b-1 and c-1)<sup>3</sup> against father. It noted that Julian had made consistent statements "time and time again" regarding what had happened and that he appeared to be telling the truth. It did not believe that mother was causing Julian to say things because she wanted to leave the state. The juvenile court removed the children from father and released them to mother. Father was granted monitored visits of three hours three times a week, with DCFS discretion to liberalize. Family preservation services were ordered for mother. Father was also ordered to participate in anger management, a parenting class, individual counseling, and conjoint counseling with the children.

The parties agree that father was also ordered to be placed on the CACI.

### *Appeal*

Father timely filed a notice of appeal on October 29, 2012.

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<sup>3</sup> Count c-1 alleges: "In March 2012, [father] . . . emotionally abused [Julian] by intimidating the child with a pocket knife. The father brandished a pocket knife and asked the child if the child wanted to live with the father or the mother. The child is afraid of the father due to the intimidation of the child by the father. The father's behavior has caused the child to exhibit aggressive and depressive behavior requiring psychotherapy."

### *Termination of Jurisdiction*

On April 17, 2013, while this appeal was pending, the juvenile court terminated jurisdiction over the children with a family law order granting sole legal and physical custody to mother, with monitored visits to father.

## **DISCUSSION**

### *I. This appeal is not moot*

DCFS argues that because a subsequent juvenile court terminated jurisdiction over the children, this appeal is moot. We disagree.

In general, the termination of dependency jurisdiction moots an appeal of the court's jurisdictional order. (*In re Marquis H.* (2013) 212 Cal.App.4th 718, 724; *In re C.C.* (2009) 172 Cal.App.4th 1481, 1488–1489 (C.C.).) “An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief.” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404 (*Yvonne W.*).)

“However, a reviewing court may exercise its inherent discretion to resolve an issue rendered moot by subsequent events if the question to be decided is of continuing public importance and is a question capable of repetition, yet evading review. [Citations.] We decide on a case-by-case basis whether subsequent events in a juvenile dependency matter make a case moot and whether our decision would affect the outcome in a subsequent proceeding.” (*Yvonne W.*, *supra*, 165 Cal.App.4th at p. 1404.)

In several cases, appellate courts have exercised their discretion to consider a parent's appeal, even after the juvenile court has terminated dependency jurisdiction, because there were exit or custody orders still adversely affecting parental rights, or because of the potential for the juvenile court's orders to affect the parent's position in a subsequent proceeding. (See, e.g., *In re J.S.* (2011) 199 Cal.App.4th 1291, 1295; *In re J.K.* (2009) 174 Cal.App.4th 1426, 1431–1432; *C.C.*, *supra*, 172 Cal.App.4th at p. 1489; *In re A.R.* (2009) 170 Cal.App.4th 733, 740; *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547–1548; but see *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491–1492.)



Here, father asserts that his appeal is not moot because of the potential consequences of the sustained jurisdictional findings against him in light of the family law order. In *In re Joshua C.*, *supra*, 24 Cal.App.4th at page 1548, the court reasoned: “The 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. . . . Moreover, refusal to address such jurisdictional errors on appeal by declaring the case moot has the undesirable result of insulating erroneous or arbitrary rulings from review.”

In an abundance of caution we consider the merits of father’s argument on appeal. (See *C.C.*, *supra*, 172 Cal.App.4th at p. 1489.)

## II. *Juvenile court’s jurisdictional findings*

### A. Standard of review

We review the juvenile court’s findings for substantial evidence (*In re David M.* (2005) 134 Cal.App.4th 822, 828), keeping in mind that the primary purpose of dependency proceedings is to serve the best interests of the child. (See *Montenegro v. Diaz* (2001) 26 Cal.4th 249, 255.) ““All conflicts must be resolved in favor of [DCFS] and all legitimate inferences indulged in to uphold the [findings], if possible.”” (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649.) We may not reweigh the evidence or redetermine the facts. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199–200.)

### B. Subdivision (b)

Section 300, subdivision (b) provides, in relevant part, that a child may fall within the jurisdiction of the juvenile court if that “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, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left.” (§ 300, subd. (b).) Three elements are necessary for a jurisdictional finding under section 300, subdivision (b): “(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 Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

Father argues that the juvenile court’s jurisdictional finding under subdivision (b) is not supported by substantial evidence. DCFS concedes. We agree with the parties that the juvenile court’s finding under subdivision (b) is not supported by substantial evidence. As a result, we reverse the juvenile court’s finding under that statutory subdivision and the concomitant order removing Destiny from father’s custody.

### C. Subdivision (c)

Father argues that the juvenile court’s jurisdictional finding under subdivision (c) is not supported by substantial evidence.

A child comes within the jurisdiction of the juvenile court under subdivision (c) of section 300 if “[t]he child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian.” (§ 300, subd. (c).)

DCFS was required to prove three elements in order for the juvenile court to assert jurisdiction under section 300, subdivision (c): “‘(1) the offending parental conduct; (2) causation; and (3) serious emotional harm or the risk thereof, as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior.’” (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 329; *In re Brison C.* (2000) 81 Cal.App.4th 1373, 1379.)

Substantial evidence supported the juvenile court’s determination that the “knife incident” occurred and that the circumstances created a substantial risk of serious emotional damage to Julian. Specifically, the juvenile court believed Julian’s repeated and consistent statements about what had occurred between him and father. That incident would be intimidating to a nine-year-old; father’s action was designed to frighten Julian, and it did. Julian reported feeling intimidated and scared during and after the incident. And, his therapist confirmed that Julian felt scared, threatened, intimidated, and really frightened as a result of the incident.

Perhaps worse, the next time Julian visited father, father responded by increasing Julian's distress. He confronted Julian about the allegations in front of other members of the family, and he humiliated Julian in front of his family. Instead of apologizing, father denied that the incident took place. Julian discussed in therapy his confusion and anxiety stemming from father's denial of what had occurred. And, his therapist stated that father's actions exacerbated Julian's mental health issues.

Finally, the juvenile court did not find credible father's claim that Julian had been coached by mother. As set forth above, we defer to the juvenile court's determinations regarding credibility.

Taken together, all of this evidence warranted juvenile court intervention. (*In re Alexander K.* (1993) 14 Cal.App.4th 549, 559 [§ 300, subd. (c) protects against abusive behavior that results in severe emotional damage].)

### III. *Juvenile court's dispositional order*

The juvenile court is empowered to remove a dependent child from the physical custody of the parent with whom the child resided when the section 300 petition was filed if the juvenile court finds clear and convincing evidence that “(1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody.” (§ 361, subd. (c)(1).) We will affirm a removal order so long as it is supported by substantial evidence. (*In re Javier G.* (2006) 137 Cal.App.4th 453, 463.)

For all of the reasons described above for finding that Julian was described by section 300, subdivision (c), Julian's health and emotional well-being were in substantial danger if he were released to father. In short, father terrified Julian with the incident with the knife and only exacerbated his emotional and psychological issues by continuing to deny that the incident occurred. Under these circumstances, the juvenile court had ample reasons to remove Julian from father's custody.

Father objects to the juvenile court's order that he participate in counseling, basically on the grounds that he does not need it. But, these were reasonable orders designed to eliminate the problems leading to jurisdiction in the first place. (§ 362, subd. (d).) There is no doubt that father could use guidance on how to interact with and respond to his children, particularly Julian.

As an alternative to removal, father proposes “one therapeutic session” of counseling with father and Julian and/or “a couple of sessions with a wraparound counselor and Julian and unannounced visits by the social worker.” There is no indication that one conjoint counseling session would magically resolve all of the issues here. And, there is no evidence in the appellate record that father would even attend any counseling sessions; he was against Julian receiving counseling and prevented Julian from receiving such services in the past. Likewise, DCFS could not provide the kind of supervision to the family needed to ensure that father treated Julian with respect for his emotional well-being at all times.

#### *IV. Placement of father's name on the CACI*

Father challenges the placement of his name on the CACI. As pointed out by DCFS, father must challenge any CACI listing through the established administrative grievance process (Pen. Code, § 11169, subd. (d); *In re C.F.* (2011) 198 Cal.App.4th 454, 464–465; Child Welfare Services Manual of Policies and Procedures regulation 31-021, p. 24.1 et seq., “Child Abuse Central Index (CACI) Grievance Procedures”).

## **DISPOSITION**

The juvenile court's finding under section 300, subdivision (b), and order removing Destiny from his custody are reversed. All other orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, Acting P. J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, J.  
CHAVEZ

\_\_\_\_\_, J.\*  
FERNS

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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.