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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

AURELIO M.,

Defendant and Appellant.

B275858

(Los Angeles County
Super. Ct. No. DK16545)

APPEAL from an order of the Superior Court of
Los Angeles County, Nichelle L. Blackwell, Juvenile Court
Referee. Affirmed.

Mitchell Keiter, under appointment by the Court of Appeal,
for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel, and Aileen Wong, Deputy County
Counsel, for Plaintiff and Respondent.

INTRODUCTION

Aurelio M. appeals from the juvenile court's findings declaring his three children dependents of the court pursuant to a petition under Welfare and Institutions Code section 300¹ and from a disposition order. Aurelio contends substantial evidence does not support the court's finding under section 300, subdivision (b), that his children faced a substantial risk of serious physical harm from Aurelio's alcohol abuse. The Los Angeles County Department of Children and Family Services argues Aurelio's appeal is moot because he does not challenge the juvenile court's jurisdiction findings under section 300, subdivisions (b) and (j), based on Aurelio's physical abuse of his children. The Department also argues that, even if the appeal is not moot, there is substantial evidence to support the juvenile court's findings and disposition order. We reach the merits of Aurelio's appeal and affirm because substantial evidence supports the juvenile court's findings and order based on Aurelio's alcohol abuse.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Petition*

Aurelio and Eileen are the parents of three children who were 12, 10 and six years old at the time of the joint jurisdiction and disposition hearing. Aurelio and Eileen divorced in 2014, and the family court gave them joint custody of the children.

¹ Undesignated statutory references are to the Welfare and Institutions Code.

The Department received a report that Aurelio had physically and emotionally abused his youngest daughter, C.M., and emotionally abused his two older daughters. After law enforcement interviewed Eileen about the alleged abuse, she obtained a temporary restraining order against Aurelio. The Department subsequently detained the children from Aurelio, placed them in protective custody, and released them to their mother.

The Department filed a petition under section 300, subdivisions (a), (b), and (j), alleging numerous incidents of physical abuse, including that Aurelio had grabbed C.M. by her neck, repeatedly struck her with shoes and belts, and held her upside down by the ankles with one hand while striking her on the buttocks with a sandal. The Department also alleged Aurelio physically abused his older daughters by striking their buttocks and legs with a belt or shoes, in some instances causing welts and other marks. The Department alleged these incidents endangered the children's physical health and safety and placed them at risk of serious physical harm, damage, and physical abuse.

The Department also alleged, in count b-4, that Aurelio "is a current abuser of alcohol which renders [him] incapable of providing regular care and supervision of the children. On prior occasions, [Aurelio] was under the influence of alcohol while the children were in [his] care and supervision. [Aurelio's] substance abuse endangers the [children's] physical health and safety and places the children at risk of serious physical harm and damage."

B. *The Investigation*

In support of the alcohol abuse count, the Department's Jurisdiction/Disposition Report cited statements by the children that their father tells them to get his beer from the refrigerator and makes them pick up empty cans from the floor, "sometimes would go through a whole 12 pack in a day," gets "louder and becomes mean to everyone" when he drinks, "never stops after one drink [and] continues to drink until he gets red in the face," and "falls asleep while drinking." Aurelio's 10-year-old daughter told the Department, "There are times that I know my dad is drunk but he thinks he is not and drives us home. I just pray nothing happens. He would lie and say he has not [drunk] anything but you can tell he has and plus you can smell it on him." The children said that if they had to go back and live with their father "the same things will happen" and they felt safer with their mother.

Eileen reported the children told her their father drinks every day. Eileen said "sometimes they don't want to go visit their father because they would [be] scared that they wouldn't be able to get to school on time because he wouldn't want to drive because he would be drunk."

Aurelio told the Department, "I don't see the crime in drinking. . . . I do not think I have a drinking problem, I like drinking and that is it, there is nothing else to it. I don't think it should be a problem for anyone when I drink and how much I decide to drink. I may have been drunk when my children were in my care but I make sure that someone else is there to care for them when I am drunk." Aurelio also stated Eileen wanted to hurt him and her goal was to alienate his children from him. "I

love my children and want the best for them and my children really love me,” Aurelio told the Department.

C. *The Jurisdiction and Disposition Hearing*

At the joint hearing the juvenile court struck the counts alleged under section 300, subdivision (a), and Aurelio stipulated to the court’s jurisdiction under section 300, subdivisions (b) and (j), based on the Department’s allegations of physical abuse. Aurelio, however, contested count b-4 alleging he abused alcohol. Counsel for Aurelio argued Aurelio did not drink “to excess” and the children exaggerated the amount their father drank. For example, Aurelio said he buys 12-packs of beer but he does not consume them all in one day. He also denied driving the children while under the influence of alcohol. Counsel for Aurelio discounted other statements made by the children, arguing there were no “eyewitness statements from any adults in this matter, other than the mother who talked about a time period that was some time ago when the parties were living together.”

The court sustained count b-4. The court stated it believed Aurelio’s daughters “have the ability to comprehend when someone is intoxicated.” The court summarized the children’s supporting statements, noting in particular they said Aurelio became loud and made fun of people when he drank at social gatherings or with his girlfriend, and other people would look at him “strangely.” The children also said they were concerned about their father’s ability to drive them to school on mornings after a party, and he sometimes slurred his words and made no sense when he drank. Finally, the court pointed to C.M.’s statement that Aurelio makes her pick up empty beer cans from the floor. “[T]hat’s clearly not an appropriate thing to do, and the

court would indicate that that is telling to show and demonstrate that the likelihood of his use has resulted [in] abuse and that the level of intoxication is not appropriate to be parenting these children.” The court noted the Department’s report, which the court admitted into evidence, also showed by a preponderance of the evidence a nexus between Aurelio’s alcohol abuse and a serious risk of physical harm to the children.

With regard to disposition, the court found by clear and convincing evidence there was a substantial danger to the physical health, safety and emotional well-being of the children, and there were no reasonable means to protect them other than to remove them from Aurelio’s physical custody. The court placed the children in the home of their mother, Eileen, and found no basis for continuing jurisdiction because she was a non-offending parent. The court also issued a custody order giving Eileen sole physical and joint legal custody of the children, and restricting Aurelio to monitored visitation. “[T]he reason for the monitored visits,” the court said, “is because the father must complete a full alcohol/drug program with random testing, 12-step program with court card and sponsor, a parenting class for age-appropriate parenting, and individual counseling to address the issues with respect to the physical abuse on a six year old and also the alcohol abuse and its impact on children.” The court terminated jurisdiction after entry of the custody and visitation order. Aurelio timely appealed from the court’s jurisdiction findings and disposition order.

DISCUSSION

A. *Aurelio's Appeal Is Not Moot*

Aurelio does not contest the juvenile court's jurisdiction or the disposition or custody orders based on the sustained allegations of physical abuse. Instead, he contests the court's findings and orders to the extent they were based on the allegations of alcohol abuse contained in count b-4. The Department argues Aurelio's appeal therefore is "nonjusticiable" because we can affirm a juvenile court judgment if the evidence supports the decision on any one of several grounds. (See *In re Drake M.* (2012) 211 Cal.App.4th 754, 762; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) The Department essentially contends Aurelio's appeal is moot because, even if we agreed with Aurelio that substantial evidence does not support the juvenile court's finding that his alcohol abuse posed a serious risk of physical harm to his children, we would not reverse the juvenile court's judgment. (See *In re A.B.* (2014) 225 Cal.App.4th 1358, 1364 [an appeal is moot if the reviewing court cannot grant effective relief]; accord, *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054; see also *In re N.S.* (2016) 245 Cal.App.4th 53, 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"].)

Aurelio acknowledges the general principle that this court can affirm the juvenile court's judgment on any ground. He nevertheless contends we have jurisdiction to hear his appeal under *In re Drake M.*, *supra*, 211 Cal.App.4th 754 and *In re M.W.* (2015) 238 Cal.App.4th 1444. Those cases state that while, "[a]s a general rule, a single jurisdictional finding supported by

substantial evidence is sufficient to support jurisdiction and render moot a challenge to the other findings,” an appellate court may review the merits of a parent’s appeal when a challenged jurisdictional 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 M.W.*, at p. 1452, quoting *In re Drake*, at pp. 762-763; see *In re D.C.* (2011) 195 Cal.App.4th 1010, 1015; *In re Anthony G.* (2011) 194 Cal.App.4th 1060, 1064-1065.)

Aurelio contends each of these considerations supports our review on the merits. In particular, he argues the court’s sustained findings under count b-4 serve as the basis for the order requiring Aurelio to complete an alcohol and drug program and submit to random testing, participate in a 12-step program, and undergo alcohol counseling. He also contends count b-4 justified certain aspects of the juvenile court’s visitation order and could impact future proceedings in the family court. While we question whether count b-4 substantively affected the visitation order and note that Aurelio has not identified any pending family court proceeding the juvenile court’s findings on count b-4 could impact, we agree the findings made in connection with count b-4 are the basis of the court’s order requiring alcohol treatment, testing, and counseling. Therefore we consider the merits of Aurelio’s appeal. (See *In re M.W.*, *supra*, 238 Cal.App.4th at p. 1452 [Court of Appeal will review the merits of findings that “appear to have motivated the [juvenile] court’s

order that mother address domestic violence in her individual counseling sessions”].)²

B. *Substantial Evidence Supports the Juvenile Court’s Finding That Aurelio’s Alcohol Abuse Created a Serious Risk to His Children’s Physical Health and Safety*

We review a challenge to the sufficiency of the evidence supporting the jurisdiction findings and disposition for substantial evidence. (*In re I.J.* (2013) 56 Cal.4th 766, 773; *In re D.C.* (2015) 243 Cal.App.4th 41, 51.) ““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. . . . We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.”” (*In re I.J.*, at p. 773; see

² The Department argues that *In re Drake M.*, *supra*, 211 Cal.App.4th 754 is distinguishable because the outcome of the appeal in that case was “the difference between the father being an ‘offending’ versus a ‘non-offending’ parent,” which is not the case here. Whether reversal would change a parent’s status from offending to nonoffending, however, is not relevant to the question of mootness where, as here, arguably erroneous findings support certain elements of a challenged order. (See *In re M.W.*, *supra*, 238 Cal.App.4th at p. 1452 [considering the merits of an arguably moot appeal even though the outcome would not affect the offending parent’s status]; *In re D.C.*, *supra*, 195 Cal.App.4th at p. 1015 [same].)

In re Alexis E., *supra*, 171 Cal.App.4th at p. 451 “[w]eighing evidence, assessing credibility, and resolving conflicts in evidence and in the inferences to be drawn from evidence are the domain of the trial court, not the reviewing court”].) We “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.*, at p. 773, internal quotations omitted.)

““Substantial evidence is evidence that is ‘reasonable, credible, and of solid value’; such that a reasonable trier of fact could make such findings.”” (*In re D.C.*, *supra*, 243 Cal.App.4th at p. 52; see *In re S.A.* (2010) 182 Cal.App.4th 1128, 1140.) “The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order.” (*In re D.C.*, at p. 52; see *In re A.E.* (2014) 228 Cal.App.4th 820, 826.)

The juvenile court sustained count b-4 pursuant to section 300, subdivision (b), which provides, in relevant part, for jurisdiction over a child where there is a substantial risk 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 by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s . . . substance abuse.” Aurelio argues the evidence of his drinking did not establish “the requisite nexus between [his] drinking” and a substantial risk of serious physical harm. He contends the evidence showed only that the children were occasionally embarrassed by his behavior when he drank, and that his behavior, while admittedly inappropriate, did not threaten the children’s physical well-being.

Dependency jurisdiction does not arise from the mere use of drugs or alcohol by a parent. (*In re Drake M.*, *supra*, 211 Cal.App.4th at p. 764; *In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 452.) For example, in *In re J.N.* (2010) 181 Cal.App.4th 1010, a father under the influence of alcohol drove into a light pole with the mother, also drunk, and children in the car. (*Id.* at p. 1017.) The Department asked the juvenile court to exercise jurisdiction over the children based on their parents' failure to protect the children because of alleged alcohol abuse. (*Id.* at p. 1015.) The Department in that case, however, presented no evidence that either parent consumed alcohol on a regular basis or that the parents' use of alcohol affected their ability to adequately supervise or protect their children. (*Id.* at p. 1026.) The court held the children faced no future risk of physical harm justifying dependency jurisdiction. (*Id.* at p. 1023.)

In contrast, the record here includes evidence that Aurelio drank alcohol every day, he frequently drank excessively, and his consumption of alcohol altered his behavior. The record also includes evidence that Aurelio drove the children while under the influence of alcohol, thus creating a substantial risk of serious physical harm. (See *In re J.N.*, *supra*, 181 Cal.App.4th at p. 1022 [past drinking and driving incident "placed [the] children at substantial risk of serious physical harm"]; see also Veh. Code, § 23572, subd. (a) [imposing enhanced penalties where a defendant convicted of driving under the influence had a minor under age 14 in the car at the time of the offense].) Moreover, the fact that Aurelio does not believe he has a problem with alcohol suggests he is unlikely to change his behavior absent intervention. (See *In re T.V.* (2013) 217 Cal.App.4th 126, 136

[parent's failure to accept responsibility for domestic violence suggests there were no reasonable means to protect his daughter absent removal]; *In re Cole C.* (2009) 174 Cal.App.4th 900, 918 [father's failure to participate in service referrals supported inference of risk of future harm]; *In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044 [parent's denial of problem may be probative to determining whether he is likely to modify behavior in the future absent court supervision].) Thus, unlike the facts in *In re J.N.*, the evidence here showed that Aurelio's alcohol abuse poses "a substantial risk of *future* serious physical harm" to his children. (See *In re J.N.*, at p. 1023.)

Aurelio attempts to discredit his children's accounts of his drunk driving by arguing the court "rejected" their perceptions of him when the court "recalled" the children reported to their mother that "they don't know if their dad is intoxicated and cannot drive them to school." Aurelio mischaracterizes the court's reasoning and his children's statements. The court merely summarized the children's statements to their mother that they did not want to stay with their father because they would not know whether he would put them in the impossible position of having to choose between having their father drive them to school while drunk and not going to school. The fact that skipping school does not result in "*serious physical harm*," as Aurelio argues, does not negate the evidence of a substantial risk of serious physical harm from riding in a car driven by a drunk driver.

Moreover, Aurelio ignores the fact that his 10-year-old daughter said he also drove her and her sisters home from social gatherings while under the influence of alcohol. The court specifically acknowledged the ability of Aurelio's daughter to

comprehend when her father was drunk. Aurelio offers no reason to discredit her testimony other than her age, which is not, without more, a sufficient reason to reject her statements. (See Evid. Code, § 700 [“every person, irrespective of age, is qualified to be a witness”]; *People v. Jones* (1990) 51 Cal.3d 294, 315 [“it is now well established that a child’s testimony cannot be deemed insubstantial merely because of his or her youth”]; accord, *People v. Catley* (2007) 148 Cal.App.4th 500, 507.)

Substantial evidence supports the juvenile court’s findings that Aurelio’s use of alcohol created a substantial risk of serious physical harm to his children. (See *In re Alexis E.*, *supra*, 171 Cal.App.4th at p. 452 [father’s failure to protect children from legal use of marijuana created risk of harm].) We therefore affirm the jurisdiction findings and disposition order.

DISPOSITION

The jurisdiction findings and disposition order are affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.