

Filed 1/16/18 In re A.A. CA2/2

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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

B281217  
(Los Angeles County  
Super. Ct. No. DK02509)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

H.A.,

Defendant and Appellant.

APPEAL from findings and an order of the Superior Court of Los Angeles County. Philip L. Soto, Judge. Affirmed in part, reversed in part, and remanded in part.

Elizabeth Klippi, under appointment by the Court of Appeal, for Defendant and Appellant.

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

---

H.A. (father) challenges the juvenile court's jurisdictional findings against him and the disposition orders removing A.A. (born Nov. 2016) from his custody and mandating that he participate in a domestic violence program. (Welf. & Inst. Code, § 300, subds. (b) & (j).)<sup>1</sup> He contends that the juvenile court's findings are not supported by substantial evidence and that the disposition order must be reversed.

We agree with father that the juvenile court's finding regarding domestic violence against father pursuant to section 300, subdivision (b)(1), is not supported by substantial evidence and reverse the juvenile court's finding as to that allegation. It follows that we agree with father that that portion of the disposition order requiring him to participate in a 52-week domestic violence program must be reversed as well. We also agree that that portion of the subdivision (j) allegation pertaining to A.A.'s half-siblings should be stricken as against father. In all other respects, we affirm.

---

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

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *Detention; Section 300 Petition*

A.A. is the youngest of 10 children, all of whom are dependents of the juvenile court.<sup>2</sup> The Los Angeles County Department of Children and Family Services (DCFS) initiated a dependency action on his behalf shortly after his birth based on allegations that mother and father engaged in a violent confrontation and that father had a criminal conviction for force likely to cause great bodily harm and four convictions for driving while under the influence.

During DCFS's ongoing involvement in the half-siblings' case, while mother was pregnant with A.A., the DCFS social worker discovered a June 18, 2016, Facebook post written by mother ranting about father "getting drunk n pulling [her] hair & there's a lot more to it." But when interviewed a week earlier, mother claimed not to know father's whereabouts, did not disclose a domestic incident, denied having any contact with father in a month, and claimed he did not know about her pregnancy with A.A. Several weeks later, on July 12, 2016, the DCFS social worker again interviewed mother, who admitted to an incident involving father, where he was drinking alcohol and pulled her hair, which was why they were no longer together. However, social media posts between the parents revealed otherwise.

---

<sup>2</sup> A.A.'s nine older siblings were dependents of the juvenile court based on severe domestic violence between all 10 children's mother, Regina D. (mother), and the half-siblings' father, Santiago R., Sr. (Santiago).

Mother claimed that she told her therapist about the domestic dispute, but the therapist denied knowing about it. And, at the time of A.A.'s birth, mother continued to deny having an ongoing relationship with father, but friends and neighbors reported otherwise.

DCFS documented father's criminal history, which dates back to 1990 when he was convicted of misdemeanor vandalism and obstruction.

DCFS detained A.A. in foster care. DCFS noted that although the domestic incident between the parents was not extreme, it was concerning when viewed in context of other circumstances. Mother had a three-year history in dependency court with her older children and a five-year history of domestic violence with Santiago. The recent incident with father demonstrated a repeat of familiar patterns despite mother's participation in services for three years. Moreover, the evidence showed that the parents remained a couple, even having a joint baby shower just two weeks before A.A.'s birth, yet mother was not honest about that. And, mother would allow father to have unauthorized contact with A.A.'s siblings, which prompted DCFS to involve father in the siblings' case and refer him to a drug treatment program, from which father was terminated for lack of participation. Social media posts by both parents refer to father being drunk. It was also suspicious that the parents used the same mailing address while insisting that they were no longer in a relationship.

During a later interview, father admitted to the hair-pulling incident, claiming that he and mother were arguing and he "yanked her hair to get her to focus." He also stated that he believed that he was an alcoholic and was getting treatment.

Father further admitted to marijuana use. He submitted to drug testing and produced three negative tests, one in February 2016 and two in December 2016. He understood DCFS's concerns about his history of convictions for driving while under the influence and agreed that if he resumed drinking, he would not be able to provide A.A. with appropriate care. He currently was living in a motel with his brother and was focused on reunifying with A.A. Since A.A.'s detention, father visited the child on a monitored basis and was appropriate during visits. DCFS was encouraged by father's honesty and interaction with the child.

*Adjudication*

The matter was adjudicated on January 19, 2017. After entertaining oral argument, the juvenile court declared A.A. a dependent under section 300, subdivisions (b)(1) and (j)(1), as follows: "In 2016[, the parents] engaged in a violent altercation. The father pulled the mother's hair. The father has a criminal history of a conviction of Force/ADW not Firearm: GBI Likely. The mother failed to protect the child in that the mother continues to allow the father to have unlimited access to the child. The child's siblings . . . are current dependents of the Juvenile Court due to domestic violence involving the mother, and the mother's failure to protect the siblings from . . . Santiago[]. The violent conduct by the father against the mother, and the mother's failure to protect the child and the child's siblings, endangers the child's physical health and safety, and places the child at risk of serious physical harm, damage, danger and failure to protect." The juvenile court also sustained count (b)(2) of the petition: Father "has a history of substance abuse, including alcohol and marijuana, which renders the father incapable of providing regular care and supervision of the child.

The child's mother . . . knew or reasonably should have known, of the father's substance abuse and failed to protect the child in that the mother continues to allow the father to have unlimited access to the child. The father has a criminal history of a conviction of Driving While Intoxicated BAC Greater Than or Equal to 0.15, and three convictions of DUI Alcohol/0.08 Percent. The father's history of substance abuse endangers the child's physical health and safety, and places the child at risk of serious physical harm, damage, and failure to protect."

The juvenile court ordered A.A. removed from parental custody and ordered DCFS to provide reunification services, including, for father, drug treatment, a 52-week domestic violence program, parenting education, individual counseling, and monitored visits.

#### *Appeal*

Father timely appealed. While the appeal was pending, on July 20, 2017, the juvenile court placed A.A. in father's custody.

### **DISCUSSION**

Father contends that the juvenile court's jurisdictional findings and portions of the disposition order are not supported by substantial evidence.

#### *I. Justiciability*

In its respondent's brief, DCFS argues that father's challenge to the juvenile court's jurisdictional findings is not justiciable. After all, regardless of our decision, jurisdiction will remain in place because of mother's unchallenged conduct.

While DCFS is correct that we can affirm jurisdiction over A.A. if any one statutory ground for jurisdiction is supported by substantial evidence (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451), we opt to exercise our discretion and reach the merits of

father's challenge (*In re D.P.* (2015) 237 Cal.App.4th 911, 917). The outcome of this appeal could be the difference between father being an "offending" as opposed to "non-offending" parent, with far-reaching implications in further dependency proceedings. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 763.)

Thus, we turn to the merits of father's appeal.

## II. *Juvenile Court's Findings* (§ 300)

### A. Standard of review

As the parties agree, we review the juvenile court's findings for substantial evidence. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649.)

### B. Relevant law

Section 300, subdivision (b)(1), authorizes dependency jurisdiction when the "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 inability of the parent or guardian to provide regular care for the child due to the parent's . . . substance abuse." (§ 300, subd. (b).)

Three elements are often cited as necessary for a jurisdictional finding under section 300, subdivision (b)(1): "(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.)

A child is described by section 300, subdivision (j), when "[t]he child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions." (§ 300, subd. (j).)

### C. Analysis

#### 1. *Subdivision (b)*

Dependency proceedings were designed “to prevent risk, not ignore it.” (*In re Eric B.* (1987) 189 Cal.App.3d 996, 1003–1004.) In determining whether a child is at risk of serious future injury, courts look at the totality of the circumstances. (*In re Rocco M., supra*, 1 Cal.App.4th at p. 817.)

The juvenile court did not have to wait until A.A. was actually harmed before intervening to protect him. (*In re Eric B., supra*, 189 Cal.App.3d at p. 1003.) And father’s alcohol abuse put A.A. at risk of harm (count b-2).

On appeal, father does not argue that he does not have a problem with alcohol or that he has recurrent legal problems related to his alcohol use. Rather, he contends that there was no nexus between his substance abuse and the risk that A.A. would suffer physical harm as a result because, by the time of the adjudication hearing, he had tested negative for illicit substances and his criminal history was years old. We are not convinced. This matter involves an infant, rendering father’s substance abuse inherently dangerous to the child’s physical health and safety. (*In re Drake M., supra*, 211 Cal.App.4th at pp. 766–767.)

Father’s claim that there was no evidence in the record that he was a current user or abuser of alcohol or drugs is belied by posts on both parents’ Facebook pages, father’s termination from a treatment program, and the domestic dispute with mother that occurred while father was drunk. Commendably, father immediately enrolled in programs, admitted that he needed treatment, and positively interacted with A.A., which impressed DCFS and ultimately led to the child’s placement in father’s custody. But that does not mean that at the January 2017



adjudication hearing, the evidence was insufficient to support an assumption of jurisdiction over the child based on father's substance abuse.

*In re Destiny S.* (2012) 210 Cal.App.4th 999, relied upon by father, is distinguishable. In that case, the minor was 11 years old. (*Id.* at p. 1004.) In contrast, in this case, A.A. is an infant, far more vulnerable than an 11-year-old.

In terms of domestic violence (count b-1), we agree with father that the finding is not supported by substantial evidence. The only allegation of domestic violence against father is the hair-pulling incident, which occurred while mother was pregnant with A.A. There are no other allegations of domestic abuse between father and mother. No police report was generated. And, there is no indication that the violence is ongoing or likely to continue. (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717.) While we do not condone this violent episode, and we certainly do not intend to minimize father's inappropriate behavior, we do not think that the juvenile court's finding regarding domestic violence is supported by substantial evidence.

In urging us to affirm, DCFS directs us to evidence of mother's violent relationship with Santiago, the father of A.A.'s nine older half-siblings. Mother's relationship with a violent man (Santiago) and her inability to protect her children from him cannot be held against father.

## *2. Subdivision (j)*

As pled, subdivision (j) does not appear to apply to father. While DCFS does not see how father is prejudiced by this count against him, it also has no objection to this court remanding the matter to modify the single subdivision (j) count, deleting any reference to father.

We opt to remand the matter to the juvenile court with directions to strike the following language from count j-1 in the section 300 petition: “In 2016 [the parents] engaged in a violent altercation. The father pulled the mother’s hair. The father has a criminal history of a conviction of Force/ADW not Firearm: GBI Likely. The mother failed to protect the child in that the mother continues to allow the father to have unlimited access to the child.” Certain words should also be stricken from the last sentence of this count, so that the allegation reads: “The mother’s failure to protect the child’s siblings endangers the child’s physical health and safety, and places the child at risk of serious physical harm, damage, danger and failure to protect.”

### III. *Disposition*

As for father’s challenge to the juvenile court’s removal order, it has been rendered moot by the juvenile court’s July 20, 2017, order releasing A.A. to father’s custody. (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1316.)

Father also objects to the juvenile court’s order that he participate in a domestic violence program. In light of our determination that the domestic violence allegation should not have been sustained, we agree with father that he should not be required to participate in a 52-week domestic violence class. While the juvenile court has broad authority to “make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child” (§ 362, subd. (a)), the order that a parent participate in a counseling or education program must be designed to eliminate the condition that led to the child’s dependency status (§ 362, subd. (c)). Because we are reversing the juvenile court’s finding regarding the domestic violence allegation, it follows that we reverse the juvenile court’s

order that father participate in a 52-week domestic violence program.

### **DISPOSITION**

The juvenile court's domestic violence finding under subdivision (b)(1) is reversed. The matter is remanded to the juvenile court to modify count j-1 so that it reads: "The child's siblings . . . are current dependents of the Juvenile Court due to domestic violence involving the mother, and the mother's failure to protect the siblings from the siblings' father, Santiago []. The mother's failure to protect the child's siblings endangers the child's physical health and safety, and places the child at risk of serious physical harm, damage, danger and failure to protect." That portion of the disposition order requiring father to attend a 52-week domestic violence program is reversed. As modified, the juvenile court's findings and order are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

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

We concur:

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

\_\_\_\_\_, J.  
HOFFSTADT