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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B235850

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK04888)

Respondent,

v.

JOSEPHINE D.,

Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Anthony Trendacosta, Commissioner. Affirmed.

Jesse F. Rodriguez, under appointment by the Court of Appeal, for Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Timothy M. O’Crowley, Principal Deputy County Counsel, for Respondent.

Appellant Josephine D. (Mother) appeals from an August 22, 2011 order of the juvenile court sustaining in part a petition under Welfare and Institutions Code section 300, removing her daughter, Joyce, from her custody, and providing for monitored visitation. (All undesignated statutory references are to the Welfare and Institutions Code.) Mother contends that these orders are void because substantial evidence does not support the order sustaining the petition, and that the juvenile court abused its discretion by denying her request to represent herself.

The juvenile court terminated dependency jurisdiction on February 24, 2012, after Joyce had reached the age of 18 on September 24, 2011. Mother therefore has no further right to custody or other right to relief from the juvenile court with respect to Joyce. Because Mother contends that the court's jurisdictional determination resulted in orders that may adversely affect her in the future, however, we decline to dismiss the appeal as moot.

On the merits of Mother's appeal, we conclude that the challenged orders are supported by substantial evidence, we find no abuse of discretion in the denial of Mother's self-representation request, and we therefore affirm the challenged jurisdictional determination.

BACKGROUND

Joyce R. was born in September 1993. On May 9, 2011, when she was 17 years old, she was taken into protective custody when she reported to the police that she had left Mother's home two days earlier after having been physically abused by Mother. She also reported a history of Mother's abuse and failure to provide appropriate care, physical abuse by a 19-year-old brother who also resided in Mother's home, and her resulting fear of returning home.

The Los Angeles County Department of Children and Family Services (DCFS) filed a dependency petition on May 12, 2011, alleging that Joyce came within the jurisdiction of the juvenile court under section 300 of the Welfare and Institutions Code. The petition alleged that Joyce has suffered, or there is a substantial risk she will suffer, serious physical harm inflicted nonaccidentally by Mother (§ 300, subd. (a)); that she has

suffered, or there is a substantial risk she will suffer, serious harm resulting from Mother's failure or inability to adequately protect her, resulting from Mother's willful or negligent failure to provide her with adequate food, clothing, shelter, or medical care, and from Mother's inability to provide regular care due to Mother's mental illness and emotional problems (§ 300, subd. (b)); and that Joyce's father has failed to provide her with the necessities of life (§ 300, subd. (g)).

At the detention hearing on May 12, 2011, Mother expressed her desire to represent herself, declined the court's advice to accept appointment of an attorney to represent her, and signed an Advisement And Waiver Of Right To Counsel. The court advised Mother of its concern about her ability to represent herself, and deferred its ruling on that issue. After the court read the pertinent allegations of the petition to Mother, Mother denied the petition's allegations.

The court found that a prima facie case had been established for Joyce's detention upon a showing that she came within subdivisions (a), (b), and (g) of section 300, and that her physical and emotional health was in substantial danger. It placed responsibility for Joyce's temporary custody with the DCFS, made appropriate interim orders (including, at Mother's request, an order for a "section 730" psychological evaluation of Mother), and set the date for a jurisdiction/disposition hearing.¹ After receiving the section 730 evaluation, the trial court denied Mother's request to represent herself and appointed counsel to represent her.

Mother was represented by appointed counsel at the jurisdiction/disposition hearing on August 22, 2011. After receiving documentary evidence and the testimony of Joyce and Mother, and hearing the arguments of counsel, the court made jurisdictional findings sustaining portions of the petition's allegations and finding Joyce to be a person described by section 300, subdivisions (a), (b), and (g).

¹ Evidence Code section 730 authorizes court appointment of an expert to investigate and testify concerning matters before the court.

Specifically, the court sustained the claims set forth in paragraphs a-1 (as amended), b-3 (as amended), b-7, and g-1 of the petition, finding that Mother had “inappropriately disciplined” Joyce, causing unreasonable pain and suffering; that Mother had exhibited actions consistent with mental and emotional problems that inhibit her ability to properly care for Joyce and place Joyce at risk of harm; and that Joyce’s father, whose whereabouts were unknown, had failed to provide her with the necessities of life, endangering her physical health, safety, and well being, and placing her at risk of physical harm and damage.²

Finding by clear and convincing evidence that Joyce could not be safely returned to Mother’s custody, the court ordered Joyce to remain in the care of the DCFS for suitable placement. (§ 361, subd. (c).) It set February 17, 2012 as the likely date for either permanent placement or return to Mother’s home.³

Mother appealed from the August 22, 2012 findings and orders.⁴ Her opening brief raises two issues: (1) that the order sustaining the petition is not supported by substantial evidence; and (2) that the court abused its discretion by refusing to permit Mother to represent herself in the juvenile court. For these errors, her appeal contends,

² The dependency court found: Mother had “inappropriately disciplined” [Joyce] by “striking [her] hand with a laptop computer,” and by handing Joyce’s adult brother a knife and encouraging him to kill Joyce; that Joyce does not wish to return to the home and Mother’s care due to the physical abuse (§ 300, subd. (a)1); Mother had “exhibited actions consistent with mental and emotional problems which inhibit her ability to properly care for [Joyce] and allowed Joyce to live in a chaotic home environment,” including but not limited to allowing Joyce’s adult brother to inappropriately discipline Joyce, failing to provide proper medical care and treatment for Joyce, engaging in physical disputes with Joyce’s brother in Joyce’s presence, and failing to maintain a safe and clean home, all of which placed Joyce at risk of harm (§ 300, subd. (b)3); Joyce’s father, whose whereabouts are unknown, “failed to provide [Joyce] with the necessities of life including food, clothing, shelter and medical care” (§ 300, subds. (b)7, (g)1).

³ The record reflects the court’s and the parties’ conscious awareness that Joyce would turn 18 on September 24, 2011.

⁴ Father did not appear below, and is not a party to this appeal.

the jurisdictional order must be reversed, rendering the dispositional order and all other orders of the juvenile court moot.

DISCUSSION

1. Augmentation of the Record to Reflect the Court’s Termination of Dependency Jurisdiction After Mother’s Notice of Appeal Was Filed.

Respondent accompanied the filing of its brief with a motion requesting this court to take additional evidence pursuant to Code of Civil Procedure section 909, which permits reviewing courts to “take additional evidence of or concerning facts occurring at any time prior to the decision of the appeal” With its motion, respondent provided a February 24, 2012 minute order in the juvenile court proceeding, determining that Joyce “has reached majority or has been emancipated,” and terminating dependency jurisdiction as to Joyce. In addition to responding to Mother’s arguments on their merits, Respondent’s Brief contends that Joyce’s 18th birthday and the trial court’s termination of jurisdiction ended the court’s ability to provide any relief to Mother, rendering her appeal moot.

Mother does not dispute that Joyce’s 18th birthday passed on September 24, 2011, nor does she oppose augmentation of the record to include the February 24, 2012 minute order terminating jurisdiction. She argues only that Joyce’s attainment of majority and the order terminating the court’s dependency jurisdiction do not render her appeal from the earlier jurisdiction determination moot.

We grant the unopposed motion to receive the February 24, 2012 minute order into the record on appeal. (*In re Salvador M.* (2005) 133 Cal.App.4th 1415, 1422 [proper to augment appellate record to include agency’s addendum report disclosing postjudgment event rendering issue on appeal moot]; *In re A.B.* (2008) 164 Cal.App.4th 832, 841 [proper to augment appellate record with evidence of postjudgment circumstance that does not involve second-guessing propriety of trial court’s resolution of issues]; see also Evid. Code, § 452, subd. (d) [judicial notice may be taken of records of any court of this state].) We also take notice that on February 27, 2012, Mother filed a Notice Of Appeal purporting to appeal from the dependency court’s order of February 24,

2012 terminating jurisdiction (among other orders). For the reasons set forth below, we decline to dismiss this appeal from the earlier disposition as moot.

2. Mother's Appeal from the August 22, 2011 Jurisdictional Determination Is Not Moot.

The general rule is that “[a]n action that originally was based on a justiciable controversy cannot be maintained on appeal if all the questions have become moot by subsequent acts or events. A reversal in such a case would be without practical effect, and the appeal will therefore be dismissed.” [Citation].” (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404.) The question before us therefore is whether the order terminating dependency jurisdiction rendered the appeal from the earlier jurisdictional determination “without practical effect,” and therefore moot.

Mother concedes that “as a general rule’ an order terminating juvenile court jurisdiction renders an appeal from a previous order in the dependency proceeding moot,” because “the court can give no practical relief” after dependency jurisdiction is terminated. She argues, however, that there are exceptions to that rule, including “where exercise of that jurisdiction has resulted in orders which continue to adversely affect appellant.” For this she relies on the decision in *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548 (*Joshua C.*).

In *Joshua C.*, dependency court jurisdiction was based on findings that the appellant father had sexually abused his 10-year-old daughter, and that her twin brother, too, was in danger of being sexually abused. The court’s disposition had restricted the father’s visitation of his daughter and her sibling, had placed the children in their mother’s sole custody, and had terminated dependency jurisdiction. (*Joshua C.*, *supra*, 24 Cal.App.4th at p. 1547.)

The Court of Appeal declined in that case to find that the termination of dependency jurisdiction had rendered moot the father’s appeal from the earlier jurisdictional determination and resulting custody orders. The orders respecting custody and visitation were ongoing, notwithstanding that dependency jurisdiction had ended; the appeal therefore was not moot, because the challenged custody and visitation orders

would be directly affected—“would be invalid”—if the jurisdictional basis for those orders were determined to be faulty. (*Joshua C.*, *supra*, 24 Cal.App.4th at pp. 1547-1548 [appeals in dependency matters are not moot if “the purported error is of such magnitude as to infect the outcome of [subsequent proceedings].”]) Therefore the father’s appeal was not “without practical effect,” for (if successful) it would invalidate the orders granting the sole custody to the mother and limiting the father’s visitation. (*Ibid.*)

The challenged orders in this case do not have that sort of direct or continuing impact on Mother. In our case, setting aside dependency jurisdiction and nullifying the resulting custody orders could not restore Joyce’s custody to Mother. Whether Joyce was or was not properly found to be within the court’s dependency jurisdiction, her attainment of majority has forever foreclosed the dependency court from revisiting that determination, even if the earlier determination were to be set aside.⁵

If the only issue in this appeal were whether Joyce will be subject to the court’s dependency jurisdiction, the appeal therefore could serve no useful purpose; its outcome could provide Mother with no practical relief. That is the definition of mootness. (*In re Michelle M.* (1992) 8 Cal.App.4th 326, 330; *In re Dani R.*, *supra*, 89 Cal.App.4th at p. 404.)

However, Mother contends that the principle set forth in *Joshua C.* should be applied to prevent her appeal’s dismissal, because the court’s jurisdictional findings of abuse and neglect by Mother “if erroneous, could have severe and unfair consequences to her in future dependency proceedings.” Although Joyce’s attaining majority precludes her restoration to Mother’s custody, and Mother has no minor children, she argues that “she may still have other children in the future that would be affected by the

⁵ After January 1, 2012, when the court terminates dependency jurisdiction over a nonminor who has attained the age of 18, the court maintains general jurisdiction until the nonminor reaches the age of 21, affording her an opportunity to petition for a resumption of dependency jurisdiction under certain conditions. (§§ 303; 388, subd. (e); 391, subd. (d)(2).) However the option to continue dependency jurisdiction is with the nonminor; the statute affords no such right to the nonminor’s parent. (§ 303, subds. (c), (d); 391, subd. (c)(1)(A).)

jurisdictional findings made as to Joyce.”⁶ And she argues that the challenged determinations of abuse might also expose her “to the future possibility of actual or potential loss of employment” that she might someday seek (particularly if that future employment were related to child care), if she were to be listed as a child abuser in the Child Abuse Central Index maintained by the California Department of Justice. The California Attorney General administers the Child Abuse Central Index (CACI) for the protection of children in the state. (Pen. Code, § 11170; see Pen. Code, §§ 11164-11174.3; Cal. Code Regs., tit. 11, §§ 900-906.) The Child Abuse and Neglect Reporting Act, of which CACI is a part, mandates that instances of child abuse be reported and investigated, and that the identity of individuals whose abuse of a child has been substantiated be made available to law enforcement, social services, and other such agencies who (for example) might be called upon to approve or disapprove an abuser’s future request for guardianship, adoption, or employment involving children. (Pen. Code, §§ 11164-11174.3.) For these reasons, Mother contends, the court’s underlying determinations that Mother was guilty of abuse and neglect could have future detrimental impacts on her, demonstrating that her appeal from the dependency court’s jurisdictional determination is not moot.

The possibility that Mother could be adversely affected by the dependency court’s jurisdictional findings in the future, and the fact that she has no other realistic forum in which to challenge the propriety of those findings, lead us to conclude that her appeal from those findings is not moot notwithstanding the court’s order terminating dependency jurisdiction. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1431-1432 [appeal is not moot because jurisdictional findings could affect parent if future dependency proceedings were initiated or contemplated with regard to father’s other children, if any]; *In re D.C.* (2011) 195 Cal.App.4th 1010, 1015 [same].)

⁶ The DCFS Detention Report identifies Mother’s date of birth as February 17, 1953, which (if true) would make her 59 years old at the time of the trial court’s February 24, 2012 termination of jurisdiction.

We distinguish the contrary determination in *In re Michelle M.*, *supra*, 8 Cal.App.4th 326, on the ground that there the father's appeal was found to be moot because he had permitted the order terminating dependency jurisdiction to become final without appeal, thus ending the court's jurisdiction to render further relief. (*Id.* at pp. 329-330.) Here, Mother's appeal was filed before the dependency court terminated jurisdiction, and that order therefore remains subject to challenge on appeal.

3. Substantial Evidence Supports The Juvenile Dependency Court's Order Sustaining The Section 300 Petition.

The court may take dependency jurisdiction over a child only if it finds, upon substantial evidence, that the child is a person described by one or more of the subdivisions of section 300. (*In re D.C.*, *supra*, 195 Cal.App.4th at p. 1014.) On review, we leave issues of fact and credibility to the trial court, we draw all reasonable inferences in support of its findings, and we affirm any determinations that are supported by substantial evidence. (*In re James R.* (2009) 176 Cal.App.4th 129, 135.)

The dependency court sustained the claims set forth in paragraphs a-1 (as amended), b-3 (as amended), b-7, and g-1 of the petition, corresponding to subdivisions (a), (b), and (g) of section 300. Subdivision (a) of section 300 provides in pertinent part that a child is subject to dependency jurisdiction if the child "has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian." Under subdivision (a), a substantial risk of serious future injury may be based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child, or a combination of these and other actions by the parent that indicate the child is at risk of future serious physical harm. (§ 300, subd. (a).)

Subdivision (b) of section 300 provides that a child is subject to dependency jurisdiction if the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness resulting from the parent's failure or inability to adequately supervise or protect the child, or the parent's willful or negligent failure to adequately supervise or protect the child from the conduct of one with whom the child

has been left, or the parent's inability to provide the child with regular care due to (for example) the parent's mental illness. (§ 300, subd. (b); *In re James R.*, *supra*, 176 Cal.App.4th at p. 135.)

In support of the petition the trial court received in evidence, without objection, various DCFS reports and their attachments,⁷ including a 15-page, largely typewritten, single-spaced "verified plain statement of truth" by Mother. The documents include Joyce's claims that Mother had slammed a laptop computer on her fingers, had taken away her glasses as a form of punishment, that she was often locked out of the house overnight, and that she was afraid to return home because of ongoing abuse by Mother and her brother. These documents also include descriptions of repeated physical abuse Joyce claimed to have received at her brother's hand, from which Mother did not protect her, including the incidents in which Mother handed her brother a knife and encouraged him to kill Joyce, and in which Joyce's brother had shot her with a BB gun; reports that Joyce's brother also subjects Mother to beatings, leaving her with bruises; Joyce's claims that Mother had refused to seek attention for her medical and dental needs; and a report of Joyce's belief that her Mother has displayed paranoid behaviors "and she is no longer able to distinguish reality from what she perceives a[s] the truth."⁸

Mother's typewritten "statement of truth" begins with her denial of the existence of "evidence of any abuse done by the Mother to the 2 children since they are a minor up to the present."⁹ The remainder of the document recounts the family's tribulations since

⁷ Report of 08-22-11; Last-Minute Information and attachments dated 8-15-11; Last-Minute Information and attachments dated 07-07-11; Last-Minute Information and attachments dated 06-23-11; Jurisdiction/Disposition Report dated 6-23-11; and Detention Report dated 5-12-11.

⁸ Joyce reported Mother's behavior included barricading closets with chains in fear that the police would take documents, and experiencing auditory hallucinations, which she believes are the sounds of police recording the family's conversations.

⁹ The opening summary in Mother's statement continues: "But instead the persons/employees from the different agencies and departments are the one who are not doing their job properly and there's cover up, connivance and conspiracy, done by the

before Joyce's birth, including many interactions and disputes with law enforcement and social service agencies concerning Mother's ability to care for her children; reports to law enforcement and school officials about a sexual assault on Joyce and a physical assault on Joyce's brother; a multi-page narrative about the incidents leading to and following Joyce's May 7, 2011 departure from Mother's home; Mother's explanations concerning Joyce's school and the medical care Joyce had and had not received in recent years; and a description of Joyce's May 12, 2011 detention hearing. The statement contains numerous charges of dishonesty and misconduct by social workers and social service agencies, including taking money for their personal benefit, forcing Mother to sign documents without explanation, harassing the family and breaching the confidentiality of medical records, removing records from agency files, making false and misleading statements in reports, "connivance and conspiracy" in connection with scheduling of doctors' visits, and forcing Mother to have unconsented hospitalization and surgery.

In opposition to the petition, Mother presented the testimony of Joyce and Mother. Joyce testified that in attempting to stop Joyce from using Skype, Mother had angrily slammed Joyce's laptop computer on the fingers of her right hand; that when Mother was angry with her she would sometimes hit Joyce with her hands and pull her hair; that a few months earlier her brother (who was 20 at the time of the testimony, and living with Mother) had hit her, and about two years earlier he had shot her with a BB gun; that she had reported to a social worker her belief that Mother is paranoid; and that although she had been diagnosed with eczema and she had an ovarian cyst, her Mother would not take her to a doctor for treatment.

Mother denied slamming the computer on Joyce's fingers, and denied handing a knife to Joyce's brother and encouraging him to kill Joyce, as the reports in evidence had reported. She denied that Joyce's brother had ever engaged in violent physical behavior, denied that he had ever been abusive to Joyce or had called her names, and denied that he

different departments; and we experience discrimination, excessive harassment and torture."

had ever shot Joyce with a BB gun. She confirmed that Joyce had had eczema since soon after birth, but said she had sought (unsuccessfully) to obtain a reference to a dermatologist for it, and that they still had some (ineffective) medication that had been prescribed for it in the past. Mother expressly confirmed to the court the truth of the facts in her typewritten statement.

Evaluating this evidence, the court found that Mother had exhibited conduct consistent with mental and emotional problems that inhibit her ability to properly care for Joyce and place Joyce at risk of harm. Based on the parties' stipulation, the court considered Mother's 730 psychiatric assessment only in connection with disposition, not jurisdiction. However, it concluded that Mother's own written statement "bespeaks of something going on" with respect to Mother's mental and emotional condition, apparently affecting not just her credibility but also her willingness and ability to correct the circumstances that had led to the filing of the petition. Based on the evidence before it, the court thus found the allegations of paragraphs a-1, b-3 (as well as paragraphs b-7 and g-1) of the petition to be true.

Indicating its belief that on material points Joyce was more credible than Mother, the court sustained the petition's allegations with respect to subdivision (a) of section 300 based on its findings that Mother had on one occasion "inappropriately disciplined" Joyce by striking her hand with a laptop computer, causing unreasonable pain and suffering; and that she had once handed a knife to Joyce's adult brother and encouraged him to kill Joyce. It found that due to this physical abuse, Joyce "does not wish to return to the home and care of the mother." And it found that this abuse by Mother endangers the child's physical health, safety and well-being, creates a detrimental home environment, "and places the child at risk of physical harm, damage, danger, physical abuse and failure to protect."

The court sustained the petition's allegations with respect to subdivision (b) of section 300 based on its findings that Mother "has exhibited action consistent with mental and emotional problems which inhibit her ability to properly care for the child and allowed Joyce to live in a chaotic home environment." These include Mother's conduct

allowing Joyce’s adult brother to inappropriately discipline her, failing to provide her with proper medical care and treatment, engaging in physical disputes—“a domestic violence situation”—with the brother in Joyce’s presence, and failing to maintain a safe and clean home, “all of which place Joyce at risk of harm.”

The court also found that Joyce’s father, whose whereabouts were unknown, had failed to provide her with the necessities of life, endangering her physical health, safety, and well being, and placing her at risk of physical harm and damage.¹⁰

Mother contends that these findings are not supported by substantial evidence. She argues, for example, that even if Joyce’s claim that she slammed the computer on Joyce’s fingers, causing pain, redness, and swelling (as Joyce had testified but which Mother denied) is believed, evidence is lacking that by doing so she intended to injure Joyce, or even to physically discipline her. The issue is not, however, whether Mother intended her conduct to hurt Joyce; it is whether her conduct in slamming Joyce’s fingers with the computer was nonaccidental. (§ 300, subd. (a); *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 600-601.) The evidence plainly supports the court’s implied determination that it was.

Mother’s contention that some portions of Joyce’s testimony are not credible—for example, that Mother had encouraged Joyce’s brother to kill Joyce, and that she had not arranged for needed medical care—does not demonstrate insufficiency of the evidence. It is the task of the dependency court, not this court, to evaluate the witnesses’ respective credibility; and the dependency court was expressly conscious of its duty to do so, noting that “some of these issues involved in this case include issues of credibility.” We recognize also that in evaluating the conflicting evidence, the dependency court could

¹⁰ We do not address the court’s findings under subdivisions (b)(7) and (g) of section 300, which concern only the conduct of Joyce’s father, who did not appear below and filed no appeal. Because we reach the merits of this appeal based on the potential future impact that the challenged orders could have on Mother, we find inapplicable the authority holding that a jurisdictional determination may be upheld if only one of its grounds is unchallenged or found to be adequate. (See, e.g., *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875; *In re Dirk S.* (1993) 14 Cal.App.4th 1037, 1045.)

find evidence of abuse in Mother's conduct without necessarily concluding that Mother had literally intended that Joyce's brother should kill her.

Mother points out that the record contains no evidence that Mother was formally diagnosed with a defined mental illness, or that her mental health problems actually caused serious physical harm to Joyce. But according to Joyce, and confirmed throughout the record, Mother for some years has displayed seriously paranoid behaviors, and sometimes cannot fully distinguish truth from falsity. While this condition might not directly threaten Joyce with physical harm, it nevertheless justifies the court's disbelief of Mother's denials of the petition's charges, and its conclusion that Mother is unwilling or unable to change her behavior in the future.

In sum, we find that the court's finding of dependency jurisdiction is supported by the evidence before it. The evidence of Joyce's subjection to instances of physical abuse—some of it quite serious, and some less so—provides a sufficient basis for the court to determine that Mother engaged in neglectful conduct of the sorts listed in subdivisions (a) and (b) of section 300, and that Mother's conduct resulted in "serious physical harm or illness" to Joyce, and a "substantial risk" of such harm or illness in the future. And the evidence indicating Mother's mental and emotional condition, which apparently "inhibits her ability to properly care for Joyce" and affects her willingness and ability to prevent Joyce's brother from inflicting violence on Joyce and on herself, also constitutes a sufficient basis for the court's finding of a substantial risk of continuing physical harm to Joyce. (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 566.)

4. The Dependency Court Did Not Abuse Its Discretion By Denying Mother's Request For Self-Representation.

At the May 12, 2011 detention hearing, Mother asked to be permitted to represent herself, and she signed and filed a written Advisement And Waiver Of Right To Counsel. In it, she acknowledged (among other things) that if she were permitted to represent herself it would be necessary for her "to follow all the technical rules of substantive law, juvenile court and civil procedure, and evidence"; that she would not receive any help or special treatment from the court; and that if

the court were to terminate her right to self-representation, she would then be required to be represented by a court-appointed lawyer. The court deferred its ruling on Mother's request to represent herself until after it had received and considered the section 730 psychological evaluation that Mother had requested.

On June 23, 2011, the court repeated an earlier admonition that although it had allowed Mother to represent herself at the detention hearing, "the law indicates that you do not have the absolute right to represent yourself." The court went on to observe that after reading the section 730 evaluation (which had been provided to Mother a few days earlier, it was "very, very, very concerned about what's happening in this case and your ability to represent yourself and move it forward at a rapid pace." The court based this observation in part on Mother's efforts to dispute the psychological evaluation, even when it was apparent to the court that the evaluator in fact agreed in many respects with Mother's belief that the evaluation had limited validity. "What you just said to me and what I read in the 730 evaluation are complete opposites. . . . But obviously, you think [the evaluator is] lying and you think that you disagree with what he has to say. Which indicates to me . . . that you don't fundamentally grasp what people are writing or saying."

The court then advised Mother that unless the case was resolved before trial, "I will be appointing counsel for you. Because it is my determination, based on *A.M.* and *Jackson W.*, that you are unable to understand and grasp the concepts that are necessary, are required under the code and under [section] 317 of the Welfare and Institutions Code [and] case law."¹¹ For the following 15 pages of transcript the court then tried (with little apparent success) to focus Mother's attention on the issues that were relevant to the upcoming trial, and to explain to her that the matters she was attempting to argue to the court were of little or no relevance to those issues. With apparent exasperation, the court admonished Mother that "[y]ou're not

¹¹ The court's references were to *In re A.M.* (2008) 164 Cal.App.4th 914, and *In re Jackson W.* (2010) 184 Cal.App.4th 247.

listening. You're proving my point. You're proving the point that the Court of Appeal set forth in *In re A.M.*, that you're all over the place with issues which to you are very important but with respect to the dependency law aren't important or less important."

The court made a final effort to explain to Mother why she needed counsel: "Focusing on all this stuff that I agree is not insignificant in terms of your life or what happened to you, but it's not really relevant directly to what we're talking about here, will only confuse the case, delay, and make the trial longer than it should be and, quite honestly, . . . it will not be to your benefit." The court again advised Mother that "[w]hat you're focusing on is not helping you. It's not helping you. You think it is, but it isn't." The problem with Mother representing herself, the court advised her, "is that you can't focus on what's important over what's not important in terms of your daughter."

Following the unsuccessful mediation, the court advised Mother that unless she engaged an attorney of her choice, the court would appoint an attorney for her. At a brief hearing a few weeks later, the court appointed an attorney for Mother, explaining that "I felt, based upon the [section] 730 psychological evaluation] . . . and my observations of her and the fact that she appeared to the court to, at a couple of hearings, to ramble on about things which are not necessarily relevant, that undue delay and the child's right to have the case adjudicated properly under case law and expeditiously would result."

The trial court was justified in denying Mother's request to represent herself. As Mother concedes in her brief, "the right of self-representation in a dependency proceeding is statutory rather than constitutional." We find the record sufficient to justify the trial court's determination that Mother's desire to waive counsel and to represent herself was not so knowing and intelligent as to require its acceptance by the court, in light of Mother's demonstrated inability to understand the proceedings and in light of the likelihood that her lack of understanding would be so disruptive as to significantly delay the proceedings.

Subdivision (b) of Welfare and Institutions Code section 317 provides that when a parent is financially unable to afford to employ counsel in a juvenile dependency case, and the child has been placed in out-of-home care, “the court shall appoint counsel for the parent or guardian, unless the court finds that the parent or guardian has made a knowing and intelligent waiver of counsel as provided in this section.” According to *In re Justin L.* (1987) 188 Cal.App.3d 1068, the predecessor to this provision affords a statutory right to self-representation to a parent who makes a knowing and intelligent waiver of counsel. (*Id.* at pp. 1075-1076; see also *In re A.M.*, *supra*, 164 Cal.App.4th at p. 923; *In re Angel W.* (2001) 93 Cal.App.4th 1074, 1083.) In *In re Angel W.*, the court went so far as to say that a dependency court “must respect the right of the parent to represent him- or herself as a matter of individual autonomy and avoid forcing the mentally competent parent to proceed with appointed counsel in the guise of protecting a person who is unskilled in the law and courtroom procedure.” (93 Cal.App.4th at p. 1084.) In that case, as in *In re Justin L.*, the Court of Appeal found that the trial court had abused its discretion in denying the parent’s right to self-representation, but nevertheless concluded that the error was harmless. (*In re Angel W.*, *supra*, 93 Cal.App.4th at p. 1085; *In re Justin L.*, *supra*, 188 Cal.App.3d at pp. 1076-1078.)

The trial court acceded to Mother’s request to represent herself without the assistance of counsel at the initial detention hearing, and at the pretrial hearings leading up to the jurisdiction/disposition trial. During those proceedings, it had ample opportunity to observe Mother’s inability to differentiate the issues that she considered important from those at issue in the proceedings.

After the court read the petition’s allegations to Mother, for example, Mother attempted to present the court with photographs and documents without having disclosed them to the social worker or investigators, and to persuade the court that Joyce’s brother was himself a victim of various injuries. After Mother

had received her psychological evaluation and the jurisdictional/dispositional report on June 20 (three days before the date set for the jurisdiction/disposition trial), she told the court that she had not had sufficient time to prepare her documents for disclosure to the social worker. She continued to insist on telling the court that the social worker, the police, and the mental health evaluator had lied in their reports, disregarding the court's repeated admonitions that the facts she wished to present were required to have been earlier disclosed to the social worker, and that in any event they would not be relevant until the trial. The court also had before it Mother's psychological evaluation, which assessed her as very paranoid and delusional, and grossly lacking in insight into her problems. Based on its observations of Mother, and bolstered by the psychological evaluation, the court determined that Mother was "unable to understand and grasp the concepts that are necessary" to satisfy the requirements for an effective waiver of section 317, subdivision (b).

This record shows Mother's lack of knowledge, focus, and insight concerning the issues before the court and her responsibilities with respect to those issues. It shows that these circumstances would affect not only Mother's capacity to knowingly and intelligently waive her right to counsel, but would also inevitably result in significant delays in the proceedings. And it shows the awareness of the court and the parties of the immutable deadline imposed by Joyce's approaching 18th birthday. The court was within its discretion in concluding that Mother lacked the mental capacity to understand the risks and consequences of foregoing her right to counsel, and that granting Mother's self-representation request would be likely to unduly—and prejudicially—delay the proceedings.

We also conclude that even if the record were not sufficient to show that Mother lacked the capacity to forego her right to counsel with an understanding of the probable risks and consequences of such a choice, the trial court's error in denying her right to self representation was harmless. (*People v. Watson* (1956))

46 Cal.2d 818, 836.) Because a parent's right to self-representation in a juvenile dependency proceeding is statutory rather than constitutional, denial of the right to self-representation is evaluated under the harmless error standard. (*Angel W.*, *supra*, 93 Cal.App.4th at p. 1085.) Mother argues that the denial of her right to self-representation was prejudicial to her case, because if she had been able to control the presentation of evidence at the jurisdictional hearing, she would have provided additional testimony and submitted additional evidence to refute that contained in the evidence. She says in her brief that she would have brought the laptop computer to show the court that she could not have injured Joyce's fingers with it; she would have testified that she had not deliberately locked Joyce out of her home overnight; that she had sought medical treatment for Joyce's eczema; that she would have testified why she did not report Joyce as a missing person when she left home on May 7, 2011; and she would have shown that Joyce had obtained a high school diploma.¹²

Most of these points were addressed in the evidence that was presented to the court on Mother's behalf, however. The social worker's reports show that Mother had denied all current and past abuse allegations against her. In her testimony at the jurisdiction hearing, in her interviews with the social worker, and in the 15-page written statement she had submitted to the court, Mother expressed and explained her denials of these charges and events. She denied slamming the computer on Joyce's fingers (although she did not dispute the incident with the computer); she denied encouraging Joyce's brother to kill her; she denied Joyce's brother was ever abusive to Joyce or to Mother; she said that she had taken Joyce to a doctor for her eczema, and that she had the medicine that had been prescribed for it; she explained why her home was cluttered; and she explained that she had no intention to lock Joyce out of the house. Mother

¹² Mother does not suggest that her attorney's failure to present this evidence represents ineffective assistance of counsel.

was able to present her version of the facts with respect to each of these events. The ruling denying Mother's request to represent herself therefore did not deprive the court of access to Mother's story.

On this record it is not reasonably probable that Mother would have obtained a more favorable result if the court had granted her requests to represent herself. Even if the court erred in denying Mother's requests for self-representation, the error therefore was harmless. On this record it is not reasonably probable that Mother would have obtained a more favorable result if the court had granted her request to represent herself.

DISPOSITION

The jurisdiction and disposition orders are affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

MALLANO, P. J.

JOHNSON, J.