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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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

B238849
(Los Angeles County
Super. Ct. No. CK 90433)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.R. et al.,

Defendants and Appellants.

APPEAL from an order of the Superior Court of Los Angeles County, Terry T. Truong, Juvenile Court Referee. Reversed in part and remanded; dismissed in part.

Andre F. F. Toscano, under appointment by the Court of Appeal, for Defendant and Appellant R.R.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and Appellant V.S.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Jeanette Cauble, Deputy County Counsel, for Plaintiff and Respondent.

R.R. (father) appeals from the juvenile court's jurisdictional and dispositional order adjudging his daughters dependents of the court. He contends that substantial evidence did not support the court's jurisdictional findings regarding his conduct. V.S. (mother) similarly appeals, contending that substantial evidence did not support the court's jurisdictional findings regarding her conduct. Mother also argues that the juvenile court erred in its Indian Child Welfare Act (25 U.S.C. § 1901 et seq.; ICWA) findings, and the court should have ordered the Los Angeles County Department of Children and Family Services (DCFS) to notice the Apache tribe. DCFS cross-appeals and argues that substantial evidence did not support the court's dismissal of a count against mother under Welfare and Institutions Code section 300, subdivision (a).¹ DCFS does not oppose a limited remand for the trial court to comply with the notice provisions of ICWA.

We reverse and remand for the limited purpose of completing an ICWA investigation and complying with the ICWA notice provisions, but in all other respects, we find no cause to reverse. Additionally, we find that DCFS's appeal is nonjusticiable and dismiss it.

FACTUAL AND PROCEDURAL BACKGROUND

1. Detention Report and Hearing

The family consists of father, mother, and three daughters, A.R., M.R., and R.R. A.R. was 16 years old, M.R. was 12 years old, and R.R. was eight years old at the time they were detained. Mother and father married in 1994 and separated in 2008. Mother moved out and left the daughters in father's care because she felt that he was better able to provide for them. The family came to the attention of DCFS in October 2011 when a referral alleged that M.R. had recently disclosed her father raped her when she was six to seven years old. M.R. also reported that father had recently started touching her inappropriately.

M.R.'s account of the rape was as follows. The family was living in a motel when she was six to seven years old. Mother was at work and her siblings were asleep when

¹ All further undesignated statutory references are to the Welfare and Institutions Code.

father pulled M.R. into the bathroom, took his and her pants down, and penetrated her. M.R. kicked and tried to scream and was able to pull herself away from him after two to three minutes. She ran out of the motel room and walked to a nearby fast food restaurant, where she bought an ice cream cone. When she returned approximately an hour later, she acted as though nothing had happened and father did not touch her again. She did not report anything because she wanted to keep her family together.

M.R. reported that recently father had begun touching her inappropriately. In the spring of 2011, father began groping her breasts and thighs. She shares a room with her younger sister R.R. M.R. sleeps on the top bunk of their bunk bed, and R.R. sleeps on the bottom bunk. When father woke her up for school in the morning, he had been groping her breast through her clothes and rubbing the inside of her thighs. Sometimes his hand would creep up toward her vagina, but he never made contact with it. She would usually try to ignore the groping, but there were many times when she told father to stop, and he would ignore her. She said this occurred nearly every day. She also reported that father had come into her room when she was dressing on one occasion, even though she told him not to do so. She asked him to leave and he did, but he did so slowly. M.R. told her maternal grandmother about the groping, and maternal grandmother said she would talk to father about it. M.R.'s maternal aunt heard of the molestation allegations and came to their home in October 2011, where she picked up M.R., A.R., and R.R., and took them to her house. M.R. was interviewed by police officers later that night, and this was when she disclosed the rape allegations.

M.R. reported that she had been diagnosed with bipolar disorder, schizophrenia, and depression, although her school therapist reported that she had only been diagnosed with depression at that point. M.R. stated that she had thought about taking her own life in the past. She had feelings of extreme sadness. Several of her friends had committed suicide, and she was also sad because she had several pets who died. She reported seeing shadows and hearing whispers, which she believed started after her grandmother died. She also had nightmares and trouble sleeping. She was supposed to be taking medication starting over the summer, but it made her feel nauseous, so she stopped taking it.

M.R.'s older sister A.R. was aware of M.R.'s allegations against her father. She did not know what to believe because she could not believe father would molest or abuse anyone. She had never seen or heard of any behavior that would suggest father was molesting anyone. Father had never molested her. She said father could be loud or argumentative and does yell and scream at them "a lot," but she attributed this to their "money issues."

R.R. was not aware of M.R.'s allegations against father. She said that no one had ever touched her in an inappropriate manner. She had never seen nor heard father doing anything inappropriate to her sisters. She knew that father always walked into the room she shared with M.R. to wake M.R. up in the mornings. He woke her up by standing next to their bunk bed. She would often hear M.R. tell father, "Stop, leave me alone." The voice she used to mimick M.R.'s voice was not panicky, but sounded sleepy and low.

Father stated that the allegations against him were untrue and he denied ever raping or inappropriately touching any of the children. He said that maternal grandmother never discussed any issues with him. Father stated that he is a "Christian man" and would never do something like this. Father was informed that law enforcement was involved and he immediately volunteered to take a lie detector test. Father said he would cooperate with everyone in the investigation and was in agreement with the plan to temporarily place the children in the home of their maternal aunt for the duration of the investigation, and he agreed to monitored visits with the children.

Mother was "blown away" by M.R.'s allegations against father. Mother stated that she was sexually abused as a minor and took the allegations very seriously. She reported that father was also touched inappropriately as a minor, and he once admitted to her that he had molested his niece. She said father was a minister at his church and worked with children. She wanted the children to come live with her and pledged to do whatever was necessary to keep them safe. She had spoken with father and they had agreed that he would move out of the family home and mother and her boyfriend would move in there with the children. Mother felt that M.R. blamed father for her parents' separation and felt that M.R. displayed hatred toward father. Mother had noticed a change in M.R. in the last year in that

she had been unable to sleep, did not want to eat, and had reported hearing voices. Mother stated that M.R. was having a hard time dealing with the grief of having lost several friends who committed suicide and having lost several pets as well.

Father was interviewed by a detective with the Los Angeles County Sheriff's Department and submitted to a polygraph exam. Father told the detective that he never molested or raped M.R. When asked why M.R. would make up such stories, father said that she may have some type of mental disorder. She had been telling father for the last nine months that she hears voices in her head. Father failed his polygraph exam. Although father was arrested, he was released when the district attorney decided not to prosecute the case.

M.R.'s school therapist contacted DCFS shortly after father was released from jail to say that she was very concerned for M.R.'s safety. M.R. was in the therapist's office at that moment and had said she was thinking about suicide and had a plan. The therapist was going to arrange a psychological evaluation for M.R. The therapist called DCFS later and said that M.R. was hospitalized with a 72-hour hold. She noted that the school had notified mother of M.R.'s condition, and when mother arrived at the school, she was yelling at M.R. and was very verbally aggressive towards M.R. and the school staff, but she eventually calmed down.

DCFS filed a petition under section 300, subdivisions (a), (b), (d), and (j) alleging that father physically and sexually abused M.R., mother knew or should have known about the abuse and failed to protect her, and A.R. and R.R. were at risk of similar harm. At the detention hearing on October 21, 2011, mother notified the court that she had Apache heritage on her mother's side of the family, though she was not sure from which relative. She reported that her uncle mentioned it, and he was the person who kept track of it. She was not aware that any relative had registered with the Apache tribe. Mother also indicated on her "Parental Notification of Indian Status" form that she "may have Indian ancestry," namely, the Apache tribe. The court found that it did not have "reason to know" that the children were Indian children as defined under ICWA and declined to order notice to any tribe. The court told mother that if she did speak with her uncle and obtain additional

information about family members being members of the Apache tribe, she should let the social worker know.

The court found a prima facie case for detaining the children and ordered them released to mother's custody. The matter was continued for a pretrial resolution conference and adjudication hearing.

2. Ex Parte Application

On November 7, 2011, DCFS filed an ex parte application to detain M.R. from mother and place her in the home of her maternal aunt. The application was based mostly on events that occurred after the detention hearing. Father had moved out of the family home and mother was residing there with the three children, her boyfriend, and maternal grandmother. More details had come out about mother's behavior toward M.R. when M.R. was hospitalized under a 72-hour hold. When mother arrived at M.R.'s school after the therapist had informed her that M.R. was being taken to the hospital for an evaluation, she immediately put her face up against M.R.'s and screamed at her to "stop manipulating people." For approximately half an hour, mother continued to verbally berate M.R. and yell in her face. Mother told her to "get her emotions straight" and "get her stuff together." Mother also yelled at the school staff who tried to intervene, saying that M.R. was merely an antisocial personality who was inventing symptoms to avoid doing school work.

DCFS spoke to M.R.'s case manager at the hospital. After further evaluation, the hospital had placed M.R. on a 14-day hold, meaning the hospital could discharge her at any time during those 14 days. The hospital had contacted mother after M.R.'s evaluation, and mother refused consent for all medications except ibuprofen. Mother made it clear that she did not believe M.R. needed to be in the hospital.

The day after M.R. was released from the hospital, she reported feeling "okay" though a little overwhelmed, especially by the prospect of going back to school the next day. She stated she was not happy living with mother, but she knew she had to "deal with it." Both A.R. and R.R. stated they were comfortable living in the home with mother and her boyfriend and had no abuse or neglect to report. A.R. was glad she had not had any contact with father and did not want to see him at that time. She now believed M.R.'s

allegations against him and “did not want anything to do with him because of what he did to [M.R.]”

The day after M.R.’s release, mother called the school police for assistance because M.R. was refusing to go to school. M.R.’s school counselor asked the school police to check on M.R. and, if needed, call the city police. When the school police arrived, mother was cooperative but appeared to think M.R.’s behavior was “all an act.” The officers noticed M.R. had fresh cuts on her arm; M.R. said she used a guitar in her room to cut herself. She told the officers that she felt like dying and if they left her there, she was going to put a knife through her heart. The officers took her to an urgent care facility and from there she was transferred to another hospital. Hospital staff and M.R.’s school therapists conferred, and they expressed a concern that mother was emotionally abusing M.R. and causing the suicidal tendencies. Mother stated that she did not believe M.R. was suicidal and she thought M.R. was acting out as a threat to mother because M.R. was “allowed to do whatever she wanted” in father’s care. At the same time she believed that M.R. was suffering emotionally and had tried to cut herself. Mother said she would do whatever was necessary to ensure M.R.’s safety, and she said that if the doctor prescribed medication for M.R., she would consent to it.

A team decisionmaking meeting took place at which various mental health professionals who had treated M.R. expressed concern about M.R.’s suicidal tendencies and mother’s minimization of M.R.’s condition. They did not feel it was safe for M.R. to return to mother’s home. It was decided that DCFS would submit a petition to detain M.R. from mother’s care, while A.R. and R.R. would remain in mother’s care. M.R. was to be placed with her maternal aunt upon release from the hospital.

On November 7, 2011, the court heard DCFS’s application and ordered that M.R. be detained from mother and placed with maternal aunt.

3. Amended Petition and Jurisdiction/Disposition Report

In DCFS’s jurisdiction and disposition report, M.R. disclosed that mother yelled at her and hit her “a lot.” She said mother slapped her earlier that year and had kicked her several times. She related an incident from November 2009 when mother banged her head

against a cupboard. She had also previously thrown a lamp at her, hit her with a belt, and scratched her eye. She reported that mother uses marijuana and does not hide it from her and her sisters. M.R. repeated the allegations that father had raped her and groped her.

A.R. reported that she had never seen mother hit M.R. Regarding M.R.'s allegations against father, she stated that she did not "know what to think." R.R. reported that M.R.'s allegations of physical abuse by mother were not true.

Mother stated that she had spanked M.R. but had never done any of the other things M.R. alleged. She had a positive toxicology screen for marijuana. She said she had tried drugs and enjoyed them but did not believe she had a problem. Regarding the allegations against father, she then felt she did not "know what to believe."

DCFS also interviewed maternal aunt. She said M.R. had told her about mother's physical abuse, but she had never seen it. She "100 percent" believed M.R.'s allegations against father. M.R. was always introverted, quiet, and "different" compared to her sisters. Now she thought this made sense in light of her "victimiz[ation]." Maternal aunt felt that it was "common knowledge" that mother used at least marijuana.

DCFS filed an amended petition on November 22, 2011. The amended petition added allegations that mother physically abused M.R. by striking her, kicking her, throwing objects at her, and pushing her. It also added allegations that mother was a current user of illicit drugs, including marijuana.

4. Adjudication Hearing

a. M.R.'s Testimony

M.R. testified in chambers at the adjudication hearing on January 17, 2012. She stated that when she was in the first grade, six or seven years old, the rape incident occurred. She was sitting in the motel room watching television when father came out of the bathroom, grabbed her, and laid her down on the bathroom floor. She thought her siblings

were not there because they were at school, and she had stayed home from school.² Mother was not there. Father pulled down his pants and her pants and penetrated her. She was kicking and screaming and trying to get away. Afterward, she went to the fast food restaurant on the corner and bought some ice cream. She had gone to that restaurant many times because it was so close to the motel, though she could not remember if she had ever gone there by herself before.

Father did not touch her in a sexual manner again until a few years later when he started waking her up in the morning by groping her breast or putting his hand up her thigh. This started when she was in the sixth grade. He did this at least once a week. In the seventh grade, father started also touching her buttocks. She would tell him to get out of her room in a “whisper-yell” when he did this, because R.R. slept in the bunk bed beneath her, and she did not want to wake up R.R. When she was in the fifth grade, father would come into her room often when she was changing. She told mother about his coming in when she was changing, and mother bought her a lock for her door. She did not use it always, however, because one had to slam the door to shut it properly, and father did not like door-slammings in the household. M.R. had never seen father inappropriately touch A.R. or R.R.

The last time mother hit M.R. was sometime around summer of the prior year, when she slapped M.R. There had been previous times when mother slapped M.R. Additionally, in November 2009, M.R. and mother were fighting, and mother hit her with a belt, scratched her underneath her eye, and threw a lamp at her. During the same fight, mother also dragged her across the living room floor and banged her head against a cupboard. A.R. came home and found M.R. on the couch crying. A.R. then started arguing with mother over mother’s treatment of M.R. Mother backed A.R. up against a table and the wall and choked her twice. After that incident, father made mother move out of the house, though mother returned a few months later.

² M.R. was referring to A.R. and an older brother who was an adult at the time of these proceedings and did not live with the family. This differed from M.R.’s earlier reporting of the incident, when she stated that her two sisters were in the motel room but asleep.

M.R. had been going through a hard time in the last few years because several friends, including her best friend, had committed suicide. She also lost several pets, and then her parents had separated. She and father had differences, including over religion and her depression.

She testified that she had told people she was hearing voices and had been hearing voices since her paternal grandmother died, which was before her first-grade year. Her current diagnosis was posttraumatic stress disorder and depression.

After M.R.'s testimony, father moved to dismiss the counts of the petition against him pursuant to section 350, subdivision (c). Mother joined in the motion and also moved to dismiss the counts against her. The children's attorney and DCFS opposed the motion. The court granted the motion with respect to all counts except for the following: (1) the counts under section 300, subdivisions (b) and (d) that father raped M.R., fondled her breasts and thighs, and watched her undress; and (2) the count under section 300, subdivision (b) that mother physically abused M.R. by striking her, throwing an object at her, kicking her, and pushing her. It dismissed the remaining counts.

b. A.R.'s Testimony

A.R. also testified in chambers. She remembered living in the motel around the time M.R. said father raped her. She did not have any knowledge of the rape allegations back then. Father had never done anything sexually inappropriate to her. He has made her feel uncomfortable before when he came into her room in the middle of the night, around 2:00 or 3:00 a.m., and stood looking at her while she was supposed to be sleeping. He would stay in her room for a few minutes looking at her, unaware that she was not asleep. This happened approximately two or three times in the last year. She thought his actions a little odd at the time, but she never said anything about it.

A.R.'s room shared a wall with M.R.'s and R.R.'s room. In the past year, she had heard father go into M.R.'s room five to 10 times in the middle of the night, anytime between 1:00 a.m. and 4:00 a.m. He would stay in there for five to 10 minutes. A.R. was skeptical that father had raped M.R., but she believed the allegations that father had groped M.R.

Approximately three years ago, A.R. recalled coming home and finding M.R. crying. She asked M.R. what had happened and M.R. told her that mother had dragged M.R. across the floor. A.R. confronted mother about the incident and the two got into a fight in which mother choked her and had her bent backwards over the dining table. A.R. had never seen mother hit M.R.

c. Father's Testimony

Father denied raping M.R. and denied touching her on the breasts or thighs. When he went in to wake her in the mornings, he would sometimes tap her on the feet. He walked in on M.R. once when she was 12 years old and she was undressing, and he turned around and walked right back out. He would often go into M.R.'s and R.R.'s room at night to do things like turn off the television, or sometimes he would go in to pray. He liked to stay up at night and study the bible and pray. He would take a bottle of oil into M.R.'s room and anoint her and pray for her. He felt he should do this because she was going through a very hard time.

He felt he and M.R. had a very two-sided relationship. When she was not demanding something, the two got along fine and talked and spent time together. When things did not go her way, she would flip on him and tell him she hated him. He did yell sometimes and get very frustrated with her.

d. Court's Findings and Orders

The court found that DCFS had shown by a preponderance of the evidence that the (b)(1), (b)(3), and (d)(1) counts should be sustained as amended to conform to proof. The sustained counts read as follows:

“B-1, D-1

“On a prior occasion, the children [A.R.], [M.R.] and [R.R.]’s father [R.R.] inappropriately sexually touched the child [M.R.] by touching the child’s breast, thigh and buttock. Such inappropriate sexual touching of the child by the father places the child and the child’s siblings [A.R.] and [R.R.] at risk of harm.

“B-3

“On prior occasions, the child[ren] [A.R.], [M.R.] and [R.R.]’s mother [V.S.] physically abused the child [M.R.] by striking the child’s face, throwing an object at the

child and dragging the child across the floor. Such physical abuse of the child by the mother endangers the child's physical health and safety and places the child and the child's siblings [A.R.] and [R.R.] at risk of harm."

The court noted that while it found it hard to believe everything M.R. had said about the rape incident, and it thus questioned the rape, it did believe "something happened" to M.R. Moreover, there were only father's statements to refute M.R.'s statements about the inappropriate touching, and it was therefore "essentially, a he said/she said" case. The court declared the children dependents of the court. M.R. was removed from the physical custody of both parents, and A.R. and R.R. were placed in the home of mother. The court ordered monitored visitation for both parents' visits with M.R. It ordered monitored visitation for father's visits with A.R. and R.R. as well. Both parents were to receive reunification services. Both parents and DCFS filed timely notices of appeal.

On September 18, 2012, we granted mother's request for judicial notice of the juvenile court's July 12, 2012 minute order terminating its jurisdiction over A.R. and R.R. and releasing them to their parents. The court found that the conditions that justified the initial assumption of jurisdiction over A.R. and R.R. no longer existed.

STANDARD OF REVIEW

In reviewing the jurisdictional findings of the juvenile court, "we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] 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." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) "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 Matthew S.* (1988) 201 Cal.App.3d 315, 321.) If supported by substantial evidence, we must uphold the judgment or findings, even though substantial evidence to the contrary may also exist, and the juvenile court might have reached a different conclusion had it determined the facts and weighed

credibility differently. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228; *In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.)

DISCUSSION

1. Substantial Evidence Supported the Court's Jurisdictional Findings Based on Father's Sexual Abuse

Father argues that the evidence was insufficient to support the jurisdictional findings because he did not inappropriately touch M.R. and “there was sufficient evidence showing that [M.R.] did make up the allegations of Father inappropriately touching her.” Father’s argument fails to persuade.

The evidence was sufficient to support the court’s jurisdictional finding based on father inappropriately touching M.R. She testified to father’s groping her. There were certain details that also corroborated her testimony. R.R. said that father woke up M.R. in the mornings by coming into their room and standing next to their bunk bed, and R.R. had heard M.R. say, “Stop, leave me alone,” on those occasions. A.R. believed M.R.’s statements that father had groped her, and father had made A.R. uncomfortable by coming into her room at night and watching her while she was pretending to sleep. The testimony of a single witness -- in this case, M.R. -- can be sufficient to uphold a jurisdictional finding. (*In re Rubisela E.* (2000) 85 Cal.App.4th 177, 195.) The juvenile court observed M.R. and father. The court found M.R. credible regarding the inappropriate touching, noting that this amounted to a “he said/she said case.” As father concedes, issues of credibility are questions for the juvenile court, and to the extent the court’s findings rest on an evaluation of credibility, “the findings should be regarded as *conclusive* on appeal.” (*In re Jordan R.* (2012) 205 Cal.App.4th 111, 136.) Yet father asks us to redetermine M.R.’s credibility. Our rejection of a witness’s statements whom the trier of fact has believed is warranted only when it is “physically impossible for the statements to be true, or their falsity [is] apparent without resorting to inferences or deductions.” (*Ibid.*) Father does not meet that standard here. He submits merely inferences that M.R. was lying because of details such as the

acrimony between father and M.R. and her sadness and depression. Substantial evidence supported the court's jurisdictional findings against father.³

2. Mother's Challenge to the Court's Jurisdictional Findings Does Not Present a Justiciable Issue

Mother contends that there was no credible, present evidence supporting the juvenile court's finding under section 300, subdivision (b) that she physically abused M.R. or endangered A.R. and R.R., and accordingly, we should reverse the court's jurisdictional order. This argument is unavailing because the issue is nonjusticiable.

Because the juvenile court's primary concern is the protection of children, a jurisdictional finding based on the conduct of one parent is sufficient regardless of the conduct of the other parent. "Once the child is found to be endangered in the manner described by one of the subdivisions of section 300 . . . the child comes within the court's jurisdiction, even if the child was not in the physical custody of one or both parents at the time the jurisdictional events occurred. [Citation.] For jurisdictional purposes, it is irrelevant which parent created those circumstances." (*In re I.A.*, *supra*, 201 Cal.App.4th at pp. 1491-1492.) "[I]t is commonly said that a jurisdictional finding involving one parent is "good against both. . . ."" (*Id.* at p. 1492.) As a result, we may "decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has been found to be supported by the evidence." (*Ibid.*; see also *In re Alexis H.* (2005) 132 Cal.App.4th 11, 16.)

Here, the jurisdictional findings of father's abuse -- which, as we have just discussed, are supported by substantial evidence -- render mother's challenge to jurisdiction nonjusticiable. Any decision we might render on the allegations involving mother will not

³ To the extent father is challenging the court's jurisdictional findings with respect to the siblings A.R. and R.R. based on abuse of M.R., that issue is not justiciable. The court has terminated its jurisdiction over A.R. and R.R. Thus, no controversy exists as to which we could grant father effective relief. (*In re Michelle M.* (1992) 8 Cal.App.4th 326, 329-330; see also *In re I.A.* (2011) 201 Cal.App.4th 1484, 1490.)

result in a reversal of the court’s jurisdictional order because the sustained allegations against father supply jurisdiction. (*In re I.A.*, *supra*, 201 Cal.App.4th at p. 1492.) We therefore decline to address mother’s jurisdictional challenge. (*Id.* at p. 1495.)

Mother contends we should depart from these rules and exercise our discretion to address her challenge, as an erroneous finding regarding her conduct will have “real legal and practical consequences.” Specifically, mother argues that if the court had dismissed the allegations against her, she could be deemed a “nonoffending” parent for purposes of custody and placement determinations under sections 361 and 361.2.

We reject mother’s argument for the reasons discussed in *In re I.A.*, *supra*, 201 Cal.App.4th at page 1494. Firstly, *In re I.A.* noted that even if the parent making this argument was “nonoffending,” he was ineligible for custody under section 361, subdivision (c)(1) because the child never resided with him during the time relevant to the proceedings.⁴ (*In re I.A.*, *supra*, 201 Cal.App.4th at p. 1494, citing *In re Miguel C.* (2011) 198 Cal.App. 4th 965, 970.) The same is true of mother here -- even if she were nonoffending, M.R. resided with father and not mother, and mother was thus ineligible for custody under section 361 in any event. Secondly, *In re I.A.* explained that although some courts have referred to a noncustodial parent who is eligible for custody under section 361.2, subdivision (a) as a “nonoffending, noncustodial” parent, the statute does *not* in fact require the parent to be nonoffending. (*In re I.A.*, at p. 1494, citing *In re V.F.* (2007) 157 Cal.App.4th 962, 970.) In other words, the parent’s status as offending would not preclude her from getting custody under this section.

In any event, were we to consider the merits of mother’s contentions, we would hold that substantial evidence supported the court’s jurisdictional finding as to mother. Contrary to mother’s urging, a showing of ongoing, present abuse of M.R. was not required. A

⁴ Section 361, subdivision (c)(1), provides that “[a] dependent child may not be taken from the physical custody of his or her parents or guardian or guardians *with whom the child resides at the time the petition was initiated*” unless the juvenile court makes certain findings. (Italics added.)

showing of prior abuse and harm of the child is sufficient to establish dependency jurisdiction over that child under subdivision (b) of section 300. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1435.) The sustained count under subdivision (b) stated that mother had physically abused M.R. on prior occasions “by striking the child’s face, throwing an object at the child and dragging the child across the floor,” endangering M.R.’s physical health and safety and placing her siblings at risk of harm. The evidence supporting the count was as follows. M.R. testified that mother slapped her on more than one occasion. She also said that on one occasion in 2009, she and mother got into a fight during which mother hit her with a belt, scratched her, threw a lamp at her, dragged her across the living room floor, and banged her head against a cupboard. A.R. corroborated this testimony when she said that around the same time, she recalled coming home to find M.R. crying, and M.R. told her that mother had dragged M.R. across the floor. A.R. then got into a violent confrontation with mother about the incident during which mother choked A.R. and had her bent backwards over a table. This evidence was sufficient to sustain the allegations under section 300, subdivision (b) that M.R. had suffered, or there was substantial risk she would suffer, serious physical harm as result of mother’s neglectful conduct.⁵

3. DCFS’s Appeal Also Does Not Present a Justiciable Issue

The allegations of physical abuse by mother under subdivisions (a) and (b) of section 300 were essentially identical, and the court sustained the subdivision (b) allegations but dismissed the subdivision (a) allegations. DCFS contends in its appeal that substantial evidence did not support the court’s dismissal of the subdivision (a) count of physical abuse by mother. We find that DCFS’s appeal does not present a justiciable issue and should be dismissed.

⁵ To the extent mother is arguing the evidence was insufficient to support the jurisdictional finding that M.R.’s siblings were at risk of harm, we note as we did in footnote 3, *ante*, that the issue is not justiciable because the court has terminated its jurisdiction over A.R. and R.R.

“The many aspects of the justiciability doctrine in California were summarized in *Wilson v. L.A. County Civil Service Com.* (1952) 112 Cal.App.2d 450: “A judicial tribunal ordinarily may consider and determine only an existing controversy, and not a moot question or abstract proposition. . . . [As] a general rule it is not within the function of the court to act upon or decide a moot question or speculative, theoretical or abstract question or proposition, or a purely academic question, or to give an advisory opinion on such a question or proposition. . . .” [Citation.] An important requirement for justiciability is the availability of ‘effective’ relief -- that is, the prospect of a remedy that can have a practical, tangible impact on the parties’ conduct or legal status. “““It is this court’s duty “to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.”””” [Citations.] When the court cannot grant *effective* relief to the parties to an appeal, the appeal must be dismissed. [Citation.]” (*In re I.A., supra*, 201 Cal.App.4th at p. 1490.)

DCFS does not attempt to explain the practical impact of any order reversing the court’s dismissal of the section 300, subdivision (a) allegations. It merely argues that the court erred in dismissing the allegations because the court sustained the section 300, subdivision (b) allegations. Because any order we enter will have no practical effect on the dependency proceeding, thereby precluding a grant of effective relief, we find DCFS’s appeal to nonjusticiable. (*In re I.A., supra*, 201 Cal.App.4th at p. 1491.) The appeal presents no other issues and may thus be dismissed.⁶

⁶ Initially, DCFS also appealed the juvenile court’s dismissal of the allegations under section 300, subdivision (b) that mother used illicit drugs. Mother responded that DCFS agreed in the juvenile court to a dismissal of the drug allegations. DCFS thereafter filed a notice of errata and request to strike the portion of its brief arguing that the court erred in dismissing the drug allegations.

4. Limited Remand for Compliance with ICWA Procedures Is Proper

Apart from her jurisdictional challenge, mother also argues that the court erred in not requiring DCFS to provide notice under ICWA. DCFS does not oppose a limited remand for the court to order ICWA notice as to M.R., the only child over which the court retains jurisdiction.

Congress enacted ICWA to “protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families” (25 U.S.C. § 1902.) “When a court ‘knows or has reason to know that an Indian child is involved’ in a juvenile dependency proceeding, a duty arises under ICWA to give the Indian child’s tribe notice of the pending proceedings and its right to intervene.” (*In re Shane G.* (2008) 166 Cal.App.4th 1532, 1538, quoting 25 U.S.C. § 1912(a).) Circumstances that may establish “reason to know” a child is an Indian child include “[a] person having an interest in the child . . . provides information suggesting the child is a member of a tribe or eligible for membership in a tribe or one or more of the child’s biological parents, grandparents, or great-grandparents are or were a member of a tribe.” (§ 224.3, subd. (b)(1).)

“If these or other circumstances indicate a child may be an Indian child, the social worker must further inquire regarding the child’s possible Indian status. Further inquiry includes interviewing the parents, Indian custodian, extended family members or any other person who can reasonably be expected to have information concerning the child’s membership status or eligibility. (§ 224.3, subd. (c).) If the inquiry leads the social worker or the court to know or have reason to know an Indian child is involved, the social worker must provide notice. (§§ 224.3, subd. (d), 224.2, subd. (a)(5)(A)-(G).)” (*In re Shane G.*, *supra*, 166 Cal.App.4th at p. 1539.) The tribe’s decision that a child is or is not an Indian child is determinative. (§ 224.3, subd. (e)(1); *In re Desiree F.* (2000) 83 Cal.App.4th 460, 470.) The court and DCFS have an affirmative and continuing duty to inquire whether a child for whom a petition under section 300 has been filed is or may be an Indian child. (§ 224.3, subd. (a).)

Here, mother provided the court with information suggesting that the children might be Indian children eligible for membership in the Apache tribe. Although mother did not know which family member may have been a member of the tribe, she identified her uncle as a source of further information. The court decided that DCFS did not need to provide ICWA notice and therefore cut off any further inquiry. At the very least, DCFS should have investigated further by contacting mother's uncle, who might have provided information that grandparents or great grandparents were members of the tribe, or some other information suggesting that the children were eligible for membership in the tribe. Accordingly, a limited remand to conduct an ICWA investigation and provide notice, if necessary, is proper. (*In re A.G.* (2012) 204 Cal.App.4th 1390, 1402; *In re Francisco W.* (2006) 139 Cal.App.4th 695, 707, 711.) The limited remand for ICWA purposes applies only to M.R., as the court terminated its jurisdiction over A.R. and R.R.

DISPOSITION

DCFS's appeal is dismissed. The jurisdictional and dispositional order is reversed. The juvenile court is directed to order DCFS to investigate and obtain complete and accurate information about maternal relatives and to provide ICWA notices regarding M.R. to any relevant tribes, if necessary. If a tribe intervenes after receiving proper notice, the court shall proceed in accordance with ICWA. If no tribes intervene after receiving proper notice, the jurisdictional and dispositional order shall be reinstated.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.