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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re JUSTIN W., et al., Persons Coming
Under the Juvenile Court Law.

B246908

(Los Angeles County
Super. Ct. No. CK96702)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

RENEE P.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, D. Zeke Zeidler, Judge. Affirmed.

William Hook, under appointment by the Court of Appeal, for Defendant and Appellant.

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

Renee P. challenges the juvenile court's determination that her son Justin W. was a dependent of the court under Welfare and Institutions Code¹ section 300, subdivision (a), and she further appeals his removal from her custody, his placement with his father, and the denial of her requested restraining order. We conclude that the removal issue has been mooted by a subsequent court order, and otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On November 28, 2012, the Department of Children and Family Services (DCFS) and the police went to the home of Renee P. to investigate the allegation that Justin W. and his half-sister Hailey O. were victims of emotional abuse by Justin W.'s father, David W., and that David W. had physically abused Justin W.

During the initial investigation, Renee P. told DCFS that David W. had slapped her and punched her when they were in a relationship; the violence was so extreme that she ended the relationship. She had called the police on several occasions, but whenever the police responded, David W. had already left the scene so nothing was ever done about the violence.

Renee P. told DCFS that she believed that David W. was inebriated on Thanksgiving night. That evening, she and David W. argued because her water and power services were about to be discontinued based on nonpayment. When Renee P. saw that he was leaving without giving her money, she walked outside to his truck. She tried to speak with David W., who began to back up his truck right to her legs. Renee P. yelled at David W. to stop because he was hurting her, but David W. continued to move the truck backwards. According to Renee P., who suffered from diabetes-related muscle atrophy in her legs, she was unable to move away from the truck quickly enough to avoid David W., and he backed the truck into her three times. Initial responders and DCFS observed that Renee P.'s knees were severely bruised.

¹ Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

Five year-old Justin W. told DCFS, “I saw my daddy trying to run my mommy over, I ran inside because I was scared he would run me over too.” He said his parents often yelled at each other, which scared him; he ran outside or played because he did not like their yelling.

David W. told DCFS that Renee P. was a liar and that he never attempted to run her over. According to David W., he had come to Renee P.’s home on Thanksgiving to drop off Justin W. and to give Renee W. her child support. He paid her \$150 for Thanksgiving dinner, and she said that he needed to give her \$75 for his dinner and some leftovers. He felt that was too much money, and they had an argument. He acknowledged that Renee P. stood behind his truck but said that he did not strike her with the truck. She was calling for help and trying to get the neighbors to come outside, but no one responded. David W. denied that Justin W. could see what had happened, because his view was blocked. David W. claimed that Renee P. was crazy and said that he wanted her evaluated because she was erratic and her moods tended to swing.

Renee P. told DCFS that she used to drink alcohol but that she had been clean and sober for three and one-half years. She claimed that David W. had been using methamphetamine for the past 20 years.

Justin W. was detained from his father by DCFS. Hailey O. was not detained; both children remained in Renee P.’s care. DCFS filed a dependency petition concerning Justin W., claiming that he came within the jurisdiction of the juvenile court under section 300, subdivisions (a) and (b). Specifically, DCFS alleged under section 300, subdivision (a), that Renee P. and David W. had a history of domestic violence, including the truck incident and prior instances of David W. slapping and hitting her with fists. DCFS alleged that David W.’s violence, and Renee P.’s failure to protect Justin W. from David W., brought Justin W. within the jurisdiction of the juvenile court. DCFS restated the same allegations under section 300, subdivision (b), and further alleged that David W. had a 20-year history of substance abuse and was a present alcohol abuser, and that he was under the influence of alcohol while providing care to Justin W.

At the detention hearing in late November 2012, Justin W. was released to Renee P., with monitored visitation for David W. In December, however, Renee P. relapsed and began using alcohol again. Hailey O. had suspected that her mother was drinking, and confronted her after observing Renee P. repeatedly going out to the trunk of her car. Hailey O. found wine bottles in her mother's trunk. Hailey O. told DCFS that Renee P. drank while Justin W. was in her care, and at those times Hailey O. took care of Justin W. Hailey O. had never seen her mother get so drunk as to lose consciousness, but she often smelled like alcohol and her face was sometimes puffy.

Hailey O. reported that she was verbally abused by her mother. She also described observing domestic violence between Renee P. and David W. According to Hailey O., the two were mutually verbally and physically abusive with each other. She had seen fights in which they hit each other with a bat. Sometimes Justin W. was caught in the middle of their altercations. On one occasion, Hailey O. reported, she had to hit David W. with a bat to get him off Renee P. David W. constantly screamed at Renee P. While David W. had not been physically or verbally aggressive with Hailey O., she had seen him hit Justin W. for misbehavior.

With Renee P.'s consent, the children were removed from her custody in December 2012. Justin W. was placed with his maternal grandmother. DCFS filed a dependency petition with respect to Hailey O. on December 17, 2012, and detained Hailey O. in the home of her father John O. Renee P. began attending Alcoholics Anonymous meetings again and enrolled in an outpatient substance abuse program. Her first on demand drug test was negative for drugs and alcohol.

On December 26, 2012, the juvenile court issued a temporary restraining order to Renee P., protecting her, Justin W., and Hailey O. from David W.

On January 8, 2013, DCFS filed a first amended dependency petition concerning both Justin W. and Hailey O. DCFS alleged that the two children fell within juvenile court jurisdiction under section 300, subdivisions (a) and (b), and that Hailey O. was subject to jurisdiction under section 300, subdivision (j) as well. Specifically, the petition alleged that:

- Renee P. and David W. had a history of domestic violence and engaging in violent altercations in the children's presence; that David W. had run into Renee P. with his truck in Justin W.'s presence, had hit her with his fists, and had struck Renee P. with a bat in the children's presence; that Renee P. had struck David W. with a bat in Hailey O.'s presence; that Renee P. had failed to protect the children in that she permitted David W. to frequent the home and have unlimited access to the children; and that David W.'s violence and Renee P.'s failure to protect them endangered the children's health and safety (section 300, subdivisions (a) and (b));
- Renee P. had physically abused Justin W. by striking him on the buttocks with a belt, constituting physical abuse that was excessive and that created a risk of physical harm and abuse to both children (section 300, subdivisions (a) and (b));
- David W. had a 20-year history of substance abuse and was a current abuser of alcohol; that he had been under the influence of alcohol while Justin W. was under his care and supervision; that Renee P. knew of David W.'s substance abuse and failed to protect the child; and that the substance abuse and the failure to protect Justin W. endangered his health and safety (section 300, subdivision (b));
- Renee P. had a history of alcohol abuse and was a current abuser of alcohol, rendering her incapable of providing regular care for the children; and that she had been under the influence of alcohol while the children were under her care and supervision; and that her substance abuse endangered the children (section 300, subdivision (b));

- Renee P.'s physical abuse of Justin W. (striking him on the buttocks with a belt) placed his sibling Hailey O. at risk of physical harm, damage, danger and physical abuse (section 300, subdivision (j)).²

In DCFS's supporting reports, DCFS described interviews with Justin W., who continued to state that his father had tried to run his mother over and that "he was trying to smack her." Justin W. recounted that his parents would "smack each other in the face" and call each other profane names. He also told DCFS that he had seen David W. hit Renee P. with a belt.

David W. continued to maintain that the entire truck incident was made up and that Justin W. could not have seen what he claimed to see from where he was standing. David W. said, "Renee has called the police on me[. S]he's called Children's Services on me. I have never put my hands on her. She's pissed off because I took full custody. She's still in love with me, and she's angry at me and wants me to give her my son."

Renee P. admitted striking Justin W. with a belt: "I don't believe in spanking Justin. I had never done that before. I usually take toys away, but one day, I was getting into the shower, and he threw a pencil at my head. He gets really angry. He balls up his fists and a vein starts to pop out when he doesn't get his way. [¶] I was taking my belt off, and I had it in my hand like this [Mrs. P.] holds out her arm with the belt hanging down toward the ground]. I only tapped him with it really lightly, like this [Ms. P.] lightly taps D[ependency] I[nvestigator] Jennifer Klonsky on the leg with an open hand.] I only did it because Justin wasn't listening. He didn't cry."

Evidence to support the allegation of David W.'s substance abuse problem came from Justin W., who claimed that his father loved drinking beer and that "[n]othing happens when he does," and from Renee P., who said that David W. had used methamphetamine, that she had seen him recently outside a bar, and that he knew how to

² The petition also included an allegation under section 300, subdivision (b) pertaining to Hailey O.'s father, John O., but this allegation was dismissed and is not relevant to the issues presented on appeal.

beat alcohol tests. John O. noted that David W. and Renee P. had met in rehabilitation; that David W. taught Renee P. how to “beat the system and test clean”; and that he believed they were both drinking in rehabilitation. David W. admitted that he had previously had a methamphetamine problem but that he had done so well in rehabilitation that the judge held him out as an example. He said that he drank a few beers occasionally and that he and Renee P. had both been drinking while in rehabilitation. David W. said, “Everything that comes out of Renee [P.]’s mouth is a lie.”

Renee P. admitted to DCFS that she had been drinking. She had an alcohol problem by the age of 13 and was first in rehabilitation at the age of 14. Her most recent relapse had begun when she had a glass of wine at the liquor store where she worked. For a month or so she was able to limit herself to a single glass of wine while she made dinner, but then her drinking escalated. Hailey O. confronted her, and she admitted that she was drinking. Hailey O. left to live with her father, and Renee P. immediately stopped drinking. She told DCFS that although she did drink while Justin W. was with her, he never saw her drink, and she never blacked out. John O. confirmed that Renee P. had a long history of drinking. John O. commented, “Renee [P.] can present pretty good. She is a textbook Borderline [personality]. She seizes control, and she has abandonment issues. I think she’s more dangerous when she’s sober because she gets credibility. I think Renee uses survival tactics she learned as a kid. She really was a victim and continues to act as a victim.” David W. told DCFS that he had taken full custody of Justin W. when he was two months old because of Renee P.’s alcoholism and that he had been a stay at home dad while Renee P. was drinking. Renee P.’s drinking had gotten so bad at one time that she was living in her car.

On January 15, 2013, the juvenile court held a contested jurisdiction hearing and considered whether to issue a permanent restraining order against David W. David W. testified. He described a conflict between himself and Renee P. that began two days before Thanksgiving. David W. testified that Renee P. had brought Justin W. to a location across the street from Justin W.’s karate class to meet David W. According to David W., he began dressing Justin W. for karate class in the back of Renee P.’s car.

After an ex-employee of David W.'s approached, Renee P. became agitated and told David W. that Justin W. was not going to karate class but was "staying here." David W. told the court that he "grabbed" Justin W. and his clothes, then took Justin W. to his truck to get him ready there. According to David W., Renee P. "came from her truck over to my truck to start an altercation." He locked himself and Justin W. in the car, and Renee P. left. During Justin W.'s karate class, however, Renee P. opened the door to the studio and began yelling at David W. that he had better be "clean" because she was calling the police. Renee P. positioned her car so that it was blocking the street, causing other drivers to beep their horns; this interrupted the karate class. The karate master's assistant left the studio to find out what was happening, and then the master came out. Renee P. did not move her car. As Justin W.'s class ended, the police arrived, and David W. left with Justin W. David W. testified that the police came to his home later concerning the incident, separately questioned David W. and Justin W., and then left without further action because David W. and Justin W.'s accounts corresponded.

David W. also testified about the Thanksgiving incident. According to David W., when he returned Justin W. to Renee P. Thanksgiving evening after a visit, he walked up to Renee P.'s front porch to give Renee P. some clothes of Justin W.'s that she wanted. Renee P. demanded that he give her more money toward Thanksgiving dinner than he had been planning to contribute. David W. testified that Renee P. got off her couch and approached him. According to David W., he returned to his truck and sat in it. Renee P. "ran around to the back of the truck." David W. could see her talking on her phone. Renee P. said she was calling the police, and then began screaming, "My legs, my legs," as though she were being injured. At the time, David W.'s truck was turned off and the transmission was placed in park. He denied hitting Renee P. with the truck. David W. testified that Justin W. was on the porch the whole time and could not see Renee P. behind the truck because her sport-utility vehicle blocked his view. David W. did not get out of the car when Renee P. began yelling about her legs because "I wasn't getting out of the car. She was in one of her little rages. I just know better."

David W. denied drinking on Thanksgiving, having an alcohol problem, being drunk with Justin W. in his care, or ever drinking alcohol while Justin W. was in his care. He admitted to a past drug problem, but stated that he had not used drugs in the past 7 or 8 years since he attended rehabilitation.

David W. testified that it was not true that he had ever hit Renee P. with a bat. He was aware that Justin W. had said that he hit Renee P.: "I have read that and that is not true also," David W. testified. On cross-examination, David W. was asked why Justin W. would say that David W. had hit Renee P., and he answered, "Because he was coursed and coached by the mother."

David W. told the juvenile court that Renee P. was the aggressor in their altercations, but that he went to her home on Thanksgiving "[b]ecause we were doing Thanksgiving. That is what you are supposed to do, co-parent." He reported that the altercations had been increasing over the past six months, and that Renee P.'s moods were up and down. David W. had felt that it was all right to go to her house on Thanksgiving because Renee P.'s moods changed quickly enough that issues blew over quickly, and because there were additional people coming for Thanksgiving, making an altercation less likely.

David W. testified that the police had been called in the past concerning domestic violence with Renee P. He testified that the police "have always just dropped it because they know," as experienced officers do, "whether something is going on or not." According to David W., "The one incident they did take me to jail over it just because they said being[] that they were called, there was an altercation, that somebody has to go, and that case was dropped also because there was no evidence." David W. told the court that Renee P. was the aggressor in their conflicts.

No additional witnesses testified at the hearing; the remaining evidence came from DCFS reports and other documents. Renee P.'s counsel asked that she be stricken from the petition for lack of evidence against her, and also argued that David W.'s account of the Thanksgiving incident was incredible because the injuries to Renee P.'s legs had been observed and treated by responding authorities. Red marks and bruises on

Renee P.'s legs were inconsistent, counsel argued, with David W.'s testimony that there was no contact between his truck and Renee P.

Counsel for the children asked that the section 300, subdivision (a) and (b) counts be amended to conform to proof, noting that Justin W. was "adamant that Father attempted to hit Mother with his car. He stated this on multiple occasions." The juvenile court responded, "But did he ever say he saw it because what he says is, 'I heard my mom screaming,' he says on the jurisdiction [and] disposition report" The court read from the report: "'My dad tried to r[un] my mom over then he was trying to smack her. I heard her screaming for help. I was in the house. When the cops came, I went out of the house.' The mom says that she knows he saw it because the place he was sitting was at a couch in the window. [¶] The father says he was actually on the front porch but his view of the mother was blocked by the house from the front porch, and he could only see like the father in the front part of the truck, and nowhere does he say he saw it. He only says it happened and that he heard her screaming for help."

The children's counsel told the court that her understanding was that Justin W. had seen the incident, and that she did not believe it was possible that Justin W. had been coached since he had been so consistent about what happened since the date he was detained. The juvenile court responded, "Well, he also says the father was trying to hit the mother with his car. How does he know the state of mind of the father[?] Maybe the father was just trying to drive away and the mom walked behind the car. I am still trying to figure out why the mom followed him outside to continue a fight that she appears to be the one who started and that she admits she's the one who started it." The children's counsel also argued that Renee P.'s use of the belt on Justin W. was more an instance of inappropriate physical discipline than physical abuse, and asked the court to sustain the substance abuse allegations concerning both Renee P. and David W.

Counsel for David W. asked that the allegations concerning David W. be dismissed and argued that Renee P.'s injuries to her knees could have been self-inflicted, caused when she fell down claiming to have been struck by David W., or the result of "a diabetic episode." He noted that David W. had been drug testing and that his alcohol

consumption was not a problem, so that the substance abuse allegation should be dismissed as well.

Counsel for DCFS argued that the evidence was sufficient to support true findings concerning Renee P.'s alcohol issues, inappropriate discipline of Justin W., substance abuse by David W., and domestic violence.

The court dismissed the domestic violence allegation under section 300, subdivision (a), and found this allegation true as amended to conform to proof for purposes of section 300, subdivision (b) as follows: "The children, Justin W[.] and Hailey O[.]'s mother, Renee P[.] and Justin W[.]'s father, David W[.], have a history of engaging in violent altercations endangering the child's physical health and safety [and] placing the children at risk of physical harm, damage, danger, and failure to protect." The court sustained the counts relating to Renee's use of a belt to discipline Justin W. under section 300, subdivisions (a), (b), and (j), but amended the language of the allegation to label the conduct as inappropriate physical discipline rather than as physical abuse. The court found true the allegation concerning Renee P.'s substance abuse and dismissed the allegation of David W.'s substance abuse. The juvenile court declared the children dependents of the court, Justin W. under section 300, subdivisions (a) and (b); and Hailey O. under section 300, subdivisions (a), (b), and (j).

The court indicated it was not inclined to grant Renee P.'s request for a restraining order but to order no contact between Renee P. and David W. at disposition. Specifically, the juvenile court commented about Renee P., "I didn't find that she's a victim of domestic violence. I didn't find that she's a victim of his violence. I found that they engage in violent altercations with each other, and in this most recent incident, he showed up at her door for an exchange of the child. She got into it with him and followed him outside and continued to get into it with him."

The court found by clear and convincing evidence that remaining with Renee P. would pose a substantial danger to the children's physical health, safety, protection, or physical or emotional well-being; and that no reasonable means other than removal could protect the children. Over the objections of the children's counsel, counsel for DCFS,

and Renee P.'s attorney, the court placed Justin W. with David W. The court ordered reunification services and monitored visitation for Renee P. and various services for all adults and children involved in the matter. The court declined to issue a restraining order but ordered that Renee P. and David W. have no contact. Renee P. appeals.

DISCUSSION

I. Section 300, Subdivision (a) Finding Concerning Inappropriate Physical Discipline

Renee P. appeals the true finding on the allegation under section 300, subdivision (a) that she had inappropriately physically disciplined Justin W. by hitting him with a belt, arguing that the evidence does not support a finding that Justin W. suffered or was at risk of suffering serious physical harm inflicted non-accidentally upon the child. Justin W., however, was also found to be a dependent of the juvenile court on the basis of multiple true findings under section 300, subdivision (b), and those findings have not been challenged on appeal. Because the juvenile court's other uncontested findings offer an independent basis for affirming the exercise of jurisdiction over the child, we need not consider Renee P.'s challenges to the sufficiency of the evidence to support one allegation under section 300, subdivision (a). (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1492.)

Renee P. acknowledges that Justin W. will remain a dependent child of the court regardless of any determination made concerning this particular finding, but she seeks review of the finding because it could have "severe consequences on Renee's future legal status in relation to Justin." Specifically, she contends that the section 300, subdivision (a) finding will require her to overcome a finding that she abused her child in every future custody dispute and to disclose the finding on child custody proceeding questionnaires; that it will be given weight in custody proceedings; that it will result in her name being included in the Child Abuse Central Index, leading to potential future consequences if she undergoes a background check; and that it will provide a basis for denying her reunification services in future dependency proceedings under section 361.5, subdivision

(b)(3). Regardless of the statutory subdivision under which the allegation of inappropriate physical discipline was found true, however, the details of each count found against her will have to be disclosed on the child custody questionnaire. As the same allegation was found true under section 300, subdivisions (b) and (j), even if the true finding was reversed under section 300, subdivision (a), Renee P. would have to report the inappropriate physical discipline finding on the questionnaire because it was the basis of the true findings under other subdivisions of section 300. Similarly, the underlying conduct, not the statutory basis for the dependency findings, determines whether a report is made to the Child Abuse Central Index. (Pen. Code, §§ 11165.2, 11165.3, 11165.4, 11165.6, 11169.) As Renee P. does not dispute that she disciplined Justin W. with a belt, her inappropriate physical discipline of her child, if relevant, will be at issue in further custody proceedings regardless of the subdivisions under which the allegations were found true. Finally, with respect to a potential future denial of reunification services, it is the again underlying conduct, not the subdivision under which the findings were made that determines whether this provision applies: section 361.5, subdivision (b)(3) expressly states that the provision is applicable when a child has been “previously adjudicated a dependent of pursuant to any subdivision of Section 300 as a result of physical or sexual abuse.” As the factual finding that Renee P. used a belt to physically discipline her son would remain unchanged under section 300, subdivisions (b) and (j) even if we were to review the finding under subdivision (a), Renee P. has not demonstrated prejudice sufficient to warrant a discretionary review of the jurisdictional finding under section 300, subdivision (a). (See, e.g., *In re Drake M.* (2012) 211 Cal.App.4th 754, 763.)

II. Restraining Order

Presenting the evidence in the light most favorable to her, Renee P. contends that the juvenile court erred when it refused her request for a restraining order. The juvenile court, however, received evidence from David W. that contradicted Renee P.’s account of violence, and it is clear from a review of the record that the juvenile court did not believe

that David W. posed a danger to Renee P. or the children as she contends. The court expressly stated its conclusion that Renee P. was not a victim: “I didn’t find that she’s a victim of domestic violence. I didn’t find that she’s a victim of his violence. I found that they engage in violent altercations with each other, and in this most recent incident, he showed up at her door for an exchange of the child. She got into it with him and followed him outside and continued to get into it with him.” The court believed that Renee P. was at least equally, if not primarily, responsible for the conflicts with David W., and it did not credit the evidence that she and the children were victims of his aggression. The evidence presented to the juvenile court permitted this conclusion. We cannot second-guess the court’s determination of the credibility of witnesses and its resolution of factual conflicts. (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 830.) Renee P. has not established any legal error here.

III. Removal Order and Placement with David W.

Renee P. contends that no substantial evidence supported the juvenile court’s order removing Justin W. from her custody, and that it was not in Justin W.’s best interest to be placed with his father. We take judicial notice of minute orders concerning subsequent proceedings in this matter, and we understand from those orders that on August 26, 2013, the juvenile court terminated Justin W.’s removal from Renee P. and replaced the home of father order with a home of parents order. As Justin is no longer removed from Renee P.’s custody, the issue of removal is now moot. The subsequent orders of the court do not, however, moot the question of whether placement with David W. was in Justin W.’s best interest, as the minute orders also specify that Justin W.’s primary residence is to remain that of his father.

Once a child has been determined to be a dependent child of the court under section 300, the juvenile court has broad discretion under section 362, subdivision (a) to make “any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child.” The court’s orders will not be reversed absent a clear abuse of discretion. (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.)

Renee P. argues that placing Justin W. with David W. was an abuse of discretion because of David W.'s "long history of substance abuse and escalating violence." The juvenile court, however, appears to have accepted David W.'s testimony that he had fully addressed his drug problem in the past and that he did not have a drinking problem; and the court did not consider David W. to be the aggressor in the parental conflicts. While there was evidence from which the court could have found him to be violent and a substance abuser, the court instead accepted David W.'s account of himself and the events relevant to the dependency proceedings. We must accept the court's determination of witness credibility and its resolution of factual conflicts. (*In re Daniel G.*, *supra*, 120 Cal.App.4th at p. 830.)

Renee P.'s remaining argument, that Justin W.'s placement with David W. was an abuse of discretion because, combined with the no contact order, it would hinder her reunification efforts to the point of being a "quasi-termination of her relationship with Justin W.," also appears to be addressed by the court's home of parents order of August 26, 2013. The court ordered that Renee P. was to have overnights at least weekly with Justin W. and Hailey O., and that DCFS was to prepare a detailed visitation schedule to ensure that the overnights took place. Renee P. is proceeding with reunification and has succeeded in ending the removal, and she has not demonstrated that the placement orders presently in place impede her reunification efforts. Renee P. has not established error in placing Justin W. with his father.

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.