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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re Sa.R. et al., Persons Coming Under  
the Juvenile Court Law.

B255645  
(Los Angeles County  
Super. Ct. No. DK01843)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

D.J.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Annabelle Cortez, Judge. Dismissed.

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

Richard Weiss, Acting County Counsel, Dawyn Harrison, Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

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D.J. (mother) challenges the juvenile court's order exercising jurisdiction over her three daughters: seven-year-old Sa.R., five-year-old E.R., and three-year-old Sr.R. The juvenile court sustained the same factual allegations of inappropriate physical discipline by mother under both Welfare and Institutions Code section 300, subdivisions (a) and (b),<sup>1</sup> and sustained separate drug abuse and neglect allegations against mother under subdivision (b). On appeal, mother challenges only the juvenile court's finding under subdivision (a). Because we can grant her no effective relief even if we agreed with her contentions, we dismiss her appeal.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On October 17, 2013, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition alleging the following grounds for jurisdiction as amended and found true by the juvenile court:

A-1 and b-2: "On prior occasions, the [children's] mother, D[.]J[.], used inappropriate physical discipline with the children by striking the children with belts and her hand. Such inappropriate physical discipline was excessive and caused the children unreasonable pain and suffering. Such inappropriate physical discipline of the children by the mother endangers the children's physical health and safety and places the children at risk."

B-1: "The [children's] mother, D[.]J[.], has an unresolved history of substance abuse and is a recent abuser of methamphetamine, which renders the mother incapable of providing regular care of the children. On prior occasions in 2013, the mother possessed, used and was under the influence of methamphetamine, while the children were in the mother's care and supervision. Such illicit drug use on the part of the mother endangers the children's physical health and safety and places the children at risk."

B-4: "On prior occasions in 2013, the [children's] mother, D[.]J[.], placed the children in a detrimental and endangering situation by leaving seven year old [Sa.R.], five

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

year old [E.R.], and three year old [Sr.R.], home alone without adult supervision. Such a detrimental and endangering situation established for the children by the mother and the mother's failure to provide adult supervision of the children, endangers the children's physical health and safety, and places the children at risk of physical harm, damage and danger."<sup>2</sup>

The allegations of mother's drug use were uncontested and amply supported by the record. Mother came to the attention of DCFS from a referral alleging she was addicted to methamphetamine, smoked drugs while the children slept in the same room, and neglected to feed them until 3:00 p.m. When interviewed, mother admitted she had been using methamphetamine and she smoked it in the children's presence while they slept. A maternal aunt reported that the maternal grandmother had removed the children from mother two weeks prior for their protection and mother had been making "crazy" statements, including that the children were not hers due to sexual abuse she had suffered. On the same day mother came to the attention of DCFS, mother went to a police station to report the maternal grandmother had kidnapped the children, at which point she was arrested for being under the influence of drugs. The maternal grandmother confirmed mother's ongoing drug abuse and stated she had removed the children from mother's home because mother's drug use and erratic behavior affected her parenting.

On the allegations of physical abuse and neglect, Sa.R. told the social worker she was afraid of mother because she would lock the children in a bedroom alone at night so she could leave and stay with a neighbor. Sa.R. would climb out the window to get out, although she said the lock was now broken so they can no longer be locked inside. She explained, "My mom would leave when she thought we were asleep. I would wake up and my uncle was there with us sometimes and my mom would leave with her boyfriend." Sa.R. also reported she was afraid of mother because she sometimes would

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<sup>2</sup> The juvenile court dismissed additional allegations under section 300, subdivision (b) that mother endangered the children by failing to supervise them at the beach, resulting in Sr.R.'s near-drowning.

hit the children with a belt or her hand, although mother never left marks or bruises on her body. Sa.R. later said mother “would give me time out but sometimes she would hit my sisters with her hand because if she did it with the belt then that would really hurt.” Sa.R. reported feeling safe with the maternal grandmother.

E.R. told the social worker she preferred to stay with the maternal grandmother because the maternal grandmother did not leave them alone. She said mother would slap her when she misbehaved but denied mother used objects such as a belt or shoes because “that really hurts us.” She denied being afraid of mother.

The maternal grandmother thought mother appropriately disciplined the children and denied witnessing mother physically abusing them. She reported mother would spank them on their bottoms with her hand, but never left any marks or bruises. She said mother had told her she hit the children with a plastic belt one time. She also said mother would take off at night with her boyfriend and not tell anyone.

None of the children had visible marks or bruises.

Mother admitted leaving the children alone at night while they were asleep without making proper arrangements for their care. She left them to go get high. She also admitted she hit the children with a belt “once yes. I hit them on their butt. The belt was made of leather. Now, I try talking to them or I turn off the TV or their games.” According to her, her drug use contributed to the abuse: “When I was really bad on drugs I didn’t have any patience. I’m not proud of how I disciplined them.” When she testified at the adjudication/disposition hearing, she clarified she did not hit E.R. with a belt, but hit both Sa.R. and Sr.R. with a belt on two occasions because they had spilled water on her paperwork and she “got mad” when they “were not listening afterwards.” She said the incidents were recent. She stopped hitting them with a belt because she had “seen I marked them, and it was bad. So I didn’t want to do that anymore.” She no longer believed hitting with a belt or any object was appropriate discipline and she was taking parenting classes to learn appropriate discipline techniques. She admitted hitting the children “[s]ometimes daily” with her hand.

The juvenile court sustained the amended allegations of inappropriate physical discipline, drug use, and neglect as set forth above. With regard to the physical discipline allegation, the court noted “these were repeated instances according to [mother]. It was daily. The kids are young, three, five and seven.” The court ordered the children removed from mother’s custody and granted monitored visitation. The court ordered mother to complete a full drug and alcohol program with aftercare, random weekly drug testing, parenting classes, and individual counseling. Mother timely appealed.

### **DISCUSSION**

Mother challenges only the juvenile court’s finding of inappropriate physical discipline under section 300, subdivision (a), but does not challenge the court’s findings of inappropriate physical discipline, drug abuse, and neglect under section 300, subdivision (b).<sup>3</sup> As a result, even if we agreed with her that insufficient evidence supported the court’s finding under section 300, subdivision (a), the court still properly exercised jurisdiction under subdivision (b). Thus, we can grant her no relief.

“It is a fundamental principle of appellate practice that an appeal will not be entertained unless it presents a justiciable issue. [Citation.] The justification for this doctrine, which in general terms requires an appeal to concern a present, concrete, and genuine dispute as to which the court can grant effective relief, is well explained by Wright and Miller’s hornbook of federal practice: ‘The central perception is that courts should not render decisions absent a genuine need to resolve a real dispute. Unnecessary decisions dissipate judicial energies better conserved for litigants who have a real need

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<sup>3</sup> Section 300, subdivision (a) allows a juvenile court to exercise jurisdiction if “[t]he 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.” Section 300, subdivision (b) allows a juvenile court to exercise jurisdiction if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse.”

for official assistance.” (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1489-1490 (*I.A.*)). “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.” (*Id.* at p. 1490.) “When the court cannot grant *effective* relief to the parties to an appeal, the appeal must be dismissed.” (*Ibid.*)

“When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; see *In re Ashley B.* (2011) 202 Cal.App.4th 968, 979.)

Mother acknowledges jurisdiction over the children would remain under section 300, subdivision (b) even if we found insufficient evidence supported the juvenile court’s finding under subdivision (a). She urges us to follow a number of cases that have considered the merits of appeals because the allegedly unsupported findings could have adverse consequences in future dependency and other proceedings. Most of those decisions did not identify any *specific* adverse consequences in future proceedings, however. (See, e.g., *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219, fn. 7; *In re D.C.* (2011) 195 Cal.App.4th 1010, 1015; *In re Anthony G.* (2011) 194 Cal.App.4th 1060, 1065.)<sup>4</sup> One case involved a challenge limited to only one of two identical sustained

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<sup>4</sup> This Division has addressed the merits of one parent’s challenge to a jurisdictional order that was supported by the other parent’s unchallenged conduct because, in that case, the challenged jurisdictional findings as to that parent could have adverse consequences for placement with that parent as a “noncustodial” parent under section 361.2, subdivision (a). (*In re Christopher M.* (2014) 228 Cal.App.4th 1310, 1316-1317 [Second Dist., Div. 8]; see *In re Drake M.* (2012) 211 Cal.App.4th 754, 763 [reaching merits of appeal because outcome “is the difference between father’s being an ‘offending’ parent versus a ‘non-offending’ parent”]; cf. *In re A.R.* (2014) 228 Cal.App.4th 1146, 1151 [Second Dist., Div. 8; rejecting challenge by mother because jurisdictional order was also supported by father’s conduct and mother identified no

allegations under section 300, subdivisions (a) and (b), as in the present case, but it too did not identify any specific future consequence affected by the failure to address the merits. (*In re D.P.* (2014) 225 Cal.App.4th 898, 902 [citing *D.C.*, which itself contained no analysis].)

Mother attempts to show such future consequences, but under the facts of this case, we are not persuaded. For example, mother claims the adverse finding under section 300, subdivision (a) could lead a court to withhold reunification services under section 361.5, subdivision (b). But that provision allows the juvenile court to withhold reunification services if, among other reasons, “the child or a sibling of the child has been previously adjudicated a dependent pursuant to *any subdivision of Section 300* as a result of physical or sexual abuse” and the child was removed and returned to the parent, only to be removed again based on further physical abuse. (§ 361.5, subd. (b)(3), italics added.) By the very terms of this provision, mother remains at risk of denial of reunification services due to the unchallenged identical allegations of inappropriate physical discipline sustained under section 300, subdivision (b). In any case, a denial of reunification services must be supported by clear and convincing evidence. (§ 361.5, subd. (b).) “Because a jurisdictional finding need only be made by a preponderance of the evidence, it cannot support a denial of reunification services under section 361.5.” (*I.A., supra*, 201 Cal.App.4th at p. 1494.)

Likewise, mother raises the prospect of some as-yet unidentified effect on future family law proceedings from the findings of inappropriate physical discipline, but that risk remains in light of the identical sustained allegations under section 300, subdivision (b). Also, “[i]n any future dependency proceeding, a finding of jurisdiction must be based on current conditions” (*I.A., supra*, 201 Cal.App.4th at p. 1495), so any future impact is speculative at best.

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future adverse consequences].) Because mother is the custodial parent and other grounds supported jurisdiction as to her, that case does not govern here.

Finally, mother claims the section 300, subdivision (a) finding “could” compel her to be listed in the Child Abuse Central Index (CACI) as a “known child abuser” under the Child Abuse and Neglect Reporting Act (CANRA). (Pen. Code, § 11164 et seq.) But the CANRA and section 300, subdivision (a) set forth different standards, so it does not follow that a true finding under section 300, subdivision (a) would compel reporting under the CANRA. A jurisdictional finding under section 300, subdivision (a) may be based on not only past infliction of physical harm, but also on the risk a child would be subject to future physical harm. In contrast, to be listed in the CACI, mother must be found to have “willfully cause[d] or permit[ted] any child to suffer, or inflict[ed] thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully cause[d] or permit[ted] the person or health of the child to be placed in a situation in which his or her person or health is endangered” (Pen. Code, § 11165.3) or “willfully inflict[ed] upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition” (Pen. Code, § 11165.4). (*Gonzalez v. Santa Clara County Dept. of Social Services* (2014) 223 Cal.App.4th 72, 85.) Further, even if mother’s actions were reportable under the CANRA, they would remain that way based on the identical sustained allegations under section 300, subdivision (b). Contrary to mother’s argument, while we recognize section 300, subdivisions (a) and (b) are separate provisions, we see no difference in the effect of identical sustained allegations of physical abuse under both. We therefore can grant mother no effective relief.

#### **DISPOSITION**

The appeal is dismissed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.