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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re B.C. et al., Persons Coming Under the  
Juvenile Court Law.

B260748

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. J972977)

Plaintiff and Respondent,

v.

F.C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Phillip L. Soto, Judge. Affirmed with directions.

Maureen L. Keaney for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Jessica Paulson-Duffy, Deputy County Counsel, for Plaintiff and Respondent.

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F.C. (Father) appeals from the dispositional order declaring his two daughters, A.C. and B.C., dependents of the juvenile court pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b).<sup>1</sup> Father contends that the evidence is insufficient to support the jurisdictional findings with respect to him. We agree with Father as to findings based upon alleged domestic violence and alcohol abuse. We reject Father's challenge to the finding that he failed to provide adequate food for his daughters. We therefore affirm with directions for the court to strike the jurisdictional findings against Father related to domestic violence and alcohol abuse and the dispositional order that Father not reside in the family home.

### **FACTUAL AND PROCEDURAL SUMMARY**

#### *1. Background and Detention*

In September 2014, 13-year old A.C. and 16-year old B.C. lived with Father, their mother (Mother), and their adult brother, Mark. Another adult son, Julio, had recently moved out. Mother and the girls shared an upstairs bedroom; Father slept in the living room, and Mark had his own room. Although they lived in the same house, Mother and Father had been estranged since their son Jimmy was killed while incarcerated four years earlier.

On September 29, 2014, a social worker with the Department of Children and Family Services (DCFS) went to the family's home in response to a report of emotional abuse and general neglect. Although it was after 3:00 p.m., the girls had not eaten that day. The day before, they ate only beans and tortillas. The food in the family's refrigerator consisted of several small, school-sized cartons of milk and a basket of apples. The pantry contained one can of oatmeal and one bag of pasta. A small amount of beans was in a pot on the stove.

Mother acknowledged the lack of food in the house and explained that she would receive her SSI check in two days. She received about \$183 per month, and she said,

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

“that’s just not enough.”<sup>2</sup> To supplement SSI, Mother earned money by recycling cans and bottles. The family did not receive cash aid or food stamps because the girls did not go to school.

Father received \$1,103 per month from SSI. Father paid the rent, household bills, and bought food for himself and Mark. He did not provide Mother with money for the girls’ food. According to him, the girls lacked food because they “eat out every day and mother does not know how to manage her money.” She “would buy pizza and expensive things, and at the end of the month they no longer have money for food.” He did not know whether the girls had eaten that day.

The social worker asked B.C. what she would have to eat that day. B.C. said there were some beans in the house, but that they were for Father and Mark. She said Father and Mark bought their own food and told her not to touch it, and that this happens “all the time.” Earlier that day, Mark brought home some meat and told B.C. it was not for her. The day before, Father bought a burrito and shared it with Mark, but brought nothing for the girls.

B.C. said she went hungry every month. A.C. told the social worker that Father and Mark were “mean” because they did not let the girls eat and made them drink tap water. Mother told the social worker Father had at times prohibited her and the girls from eating food or drinking water, but had not done that lately.

Mother and the girls told the social worker that Father drank alcohol daily. B.C. said Father drank “packs and packs.” When Father drank he got “crazy” and “aggressive.” He threw things at walls and cussed at Mother and the girls, but has never hit anyone. When he threw things, Mother took the girls upstairs. Father said he threw a plate only once; he threw it into the sink, not at a wall.

B.C. called the police in July 2014 because Father was drunk, “throwing everything around, knocking down the door, and cussing at them.” B.C. was concerned

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<sup>2</sup> In a report concerning a prior referral, the social worker stated that the “girls receive SSI and the mother cashes the SSI checks and gives . . . the money to the girls and tells them to go buy their own food.”

that Father would hit Mother. By the time the police arrived, Father had fallen asleep. A search of the California Law Enforcement Telecommunications System, or CLETS, produced no results for Father.

When asked about domestic violence, Mother said that “years ago” Father threw a beer bottle or can at her, but did not hit her. B.C. also reported that Father had tried to hit Mother, “but he missed since he was so drunk.” In subsequent interviews, Mother indicated that the beer-throwing incident occurred when Mother was pregnant with B.C.

When asked if Father had ever tried to hit her, A.C. said that Father once raised his fist as if he were going to hit B.C. On another occasion, when Father had been drinking and was angry, he went to the kitchen to get a knife, but Mark stopped him. A.C. did not mention that Father ever had tried to hit her. The social worker did not notice any marks or bruises on the girls, and the girls denied any sexual abuse.

B.C. said Father punished her by disconnecting the cable so the girls could not watch television. She said she wanted “to get dad out of her life.” A.C. also wanted Father to leave.

Father did not appear to the social worker to be under the influence of alcohol. He said he drank two or three beers a day. Although he admitted he drank as a way of coping with the dysfunction in the home, he denied he had a drinking problem. He also denied becoming aggressive when he drank and said he had never hit the girls. Father said he did not allow the girls to watch television because they did not go to school, and they hate him for restricting them from the television. They wanted him to leave so they could do whatever they want.

Mark told the social worker that Father did not drink every day, but maybe a six-pack of beer per week. When Father drank, he did not get aggressive or throw things. Mark said the girls were free to eat the food he bought, but the girls did not share their food. He denied that he or Father had ever prohibited the girls from eating.

The social worker did not take the girls into protective custody at that time.

Three days later, on October 2, 2014, the social worker talked to Father by telephone and asked him to drug/alcohol test that day. Father refused and said he was

preparing to leave the home. He said he and Mother would probably “end up losing their home because he does not know how [M]other is going to pay for it.”

Later that day, the social worker went to the family home. Mother had received her SSI check, but had not yet deposited it. There was, however, food in the house that Mark received “from an agency.” The social worker found plenty of food in the refrigerator and two loaves of bread on the counter. Mother said the food was for everyone.

On October 7, 2014, the social worker called the home and informed the parents and the girls that a non-detention hearing would take place on October 10, 2014. Later that day, Father arrived at the DCFS office to deliver two letters. One was from a counselor at a middle school stating that Father had come to the school on five dates in August and September 2014 to inform the counselor that the girls were not willing to come to school. The second was from a supervising teacher at a charter school. The teacher stated that B.C. did not go to school often and that the parents were frustrated at not being able to motivate her to go to school.

On October 10, 2014, DCFS filed a petition on behalf of the girls pursuant to section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), (c) (serious emotional damage) and (j) (abuse of sibling). Counts a-1 and b-2 were based on an alleged “history of engaging in violent altercations in the children’s presence” and Father allegedly throwing “objects at the mother and around the house.” Count b-1 was based on Father’s alleged alcohol abuse, and count b-5 was based on the parents’ alleged failure “to regularly provide the children with adequate amounts of food.”<sup>3</sup>

Following a detention hearing, the court released the children to Mother and ordered Father to be out of the home that day. Father was allowed monitored visits.

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<sup>3</sup> DCFS also alleged the following counts, which were dismissed by the court: The parents failed to protect the children from physical abuse by Julio (§ 300, subd. (b); count b-3); the parents failed to protect the children from Mark’s alleged alcohol abuse (§ 300, subd. (b); count b-4); Father caused the children emotional damage by yelling at them and calling them derogatory names (§ 300, subd. (c); count c-1); and the children were physically abused by Julio (§ 300, subd. (j); count j-1).

## 2. *Jurisdiction and Disposition*

On November 8, 2014, the social worker conducted further interviews of Mother and the girls. B.C. and Mother described Father as a habitual abuser of alcohol. A.C. said Father “could drink 24 beers at one time”; B.C. said he could drink more than 30 beers at one sitting. Father kept a small refrigerator in his van stocked with beer. Although Mark denied that Father was a “raging alcoholic,” he said Father was capable of drinking 30 beers in one night.

B.C. told the social worker that she had seen numerous verbal altercations between the parents, several that had escalated to physical aggression. Each time Father was the aggressor. B.C. and A.C. said Father cussed at them, threw plates with food at the wall, and tried to beat up their adult brother Julio. Father also accused Mother of being a prostitute. A.C. told the social worker that Father “would just push [Mother]” and throw plates against the wall.

Mother said Father was verbally abusive, but attempted to strike her only once—when he threw a beer can at her while she was pregnant. Although Father threw plates at the wall, he cleaned up the mess he made.

A.C. said that Father would not give Mother money, and although they ate when there was food in the house Father did not like the girls to eat. B.C. said Father had withheld food as punishment and had locked the refrigerator to prevent Mother and the girls from eating. Mother confirmed that Father had placed a padlock on an old refrigerator to control access to food. Father explained that he had tried to put a lock on one refrigerator because it did not close properly.

Father and Mark told the social worker that Mother and the girls had fabricated the allegations to get Father kicked out of the home.

In an interview on November 12, 2014, Father told a social worker: “I don’t withhold food from my children; my family eats before I do and the truth is they just want me out of there.” He also stated: “I’m done with [the girls] and I don’t even want to see them or their mother.” He said he did not plan to continue paying for the house and he was “okay if it’s lost.”

Prior to the jurisdiction and disposition hearing, Father executed a written waiver of reunification services stating that he did not wish to receive any services, to reunify with the girls, or have custody of them. He also requested to not have any visits with the girls.

The court sustained the petition, finding true the allegations of domestic violence, alcohol abuse, and the failure to provide the children with adequate food. Based on Father's waiver, the court denied services to him. (§ 362.5, subd. (b)(14).) The court declared the girls dependents, placed them with Mother and prohibited Father from living in the house. Father timely appealed from the dispositional order.<sup>4</sup> (§ 395, subd. (a)(1).)

## DISCUSSION

### I. *Justiciability*

DCFS contends that we need not consider Father's arguments because, even if Father's challenge is successful, the girls would remain dependents of the court based on the unchallenged findings against Mother. We reject this argument. In addition to supporting jurisdiction over the girls, the court's findings make Father an "offending," rather than "non-offending," parent. (See *In re Drake M.* (2012) 211 Cal.App.4th 754, 763; see also *In re I.A.* (2011) 201 Cal.App.4th 1484, 1494, fn. 8 ["it is fair to assume that a parent whose conduct is the basis for a jurisdictional finding cannot be considered nonoffending"].) As such, the court's findings could have "far-reaching consequences" for Father in any future proceeding even though he has waived any rights to receive services or reunify with the girls. (See *In re Quentin H.* (2014) 230 Cal.App.4th 608, 613.) Moreover, refusing to address jurisdictional errors on appeal "has the undesirable result of insulating erroneous or arbitrary rulings from review." (*In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548.) We therefore exercise our discretion and address the merits of Father's arguments. (See *In re Quentin H.*, *supra*, 230 Cal.App.4th at p. 613.)

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<sup>4</sup> Mother did not appeal to challenge the jurisdictional findings against her. Mother thus is not a party to this appeal.

## II. *Sufficiency of the Evidence Supporting Jurisdiction*

### A. *Section 300, Subdivision (a)*

In count a-1, DCFS alleged that the girls have suffered, or there is a substantial risk that they will suffer, serious physical harm inflicted nonaccidentally upon them by the parents. More particularly, DCFS alleged that the parents “have a history of engaging in violent altercations in the children’s presence” and Father has thrown objects at Mother “and around the house, in the children’s presence.” The court found the allegation true. We review the finding for substantial evidence. (*In re X.S.* (2010) 190 Cal.App.4th 1154, 1160; *In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318-1319.)

“Jurisdiction under section 300, subdivision (a) requires proof that the child suffered or is at substantial risk of suffering ‘serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian.’” (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 716.) Here, DCFS does not assert that Father ever caused anyone any serious physical harm.<sup>5</sup> The allegation of a substantial risk of suffering such harm was based on the alleged domestic violence between the parents and Father’s history of throwing things. Although Father and Mother had verbal altercations and Father called her offensive names, he had never hit her. Father did try to hit Mother with a beer can when she was pregnant with B.C., but that occurred more than 16 years ago before the girls were born. Although Father also threw plates or other objects while intoxicated, no evidence shows that he ever threw such objects at Mother or the girls, or that anyone was at risk of physical harm. Father had no criminal history, and nothing came of B.C.’s call to the police in July 2014. Finally, by the time of the jurisdiction

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<sup>5</sup> During the initial round of interviews, the social worker asked Mother, A.C., and B.C. if Father had ever hit them. Although Mother and B.C. said Father had once tried to hit Mother, but missed because he was drunk, no one said Father had ever hit anyone. During the second round of interviews, after the detention hearing, A.C. told the social worker that Father “hit us with cords and wires or belts,” slapped her on the cheek, and hit her with a 10-gallon water bottle. B.C. stated that Father “line[d] us up and hit us one by one with the belt for no reason”; and Father hit her back, her face, and her “bottom.” Significantly, DCFS did not rely on these later statements to support its allegations of violence against Mother or the girls and does not rely on them on appeal.

hearing, Father had either left the family home or was about to leave, and indicated he had no desire to see the girls again. Father's lack of interest in maintaining any relationship with the girls reduced any risk that he would cause them any physical harm in the future. For all these reasons, the evidence is insufficient to support the court's true finding under section 300, subdivision (a).

B. *Subdivision (b) allegations*

Section 300, subdivision (b) authorizes juvenile court jurisdiction if a child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness as a result of the parent's (1) failure to supervise or protect the child; (2) failure to provide the child with adequate food, clothing, and shelter; or (3) inability to provide care due to the parent's substance abuse. The requirement of serious physical harm or the substantial risk of such harm "effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur)." [Citation.]” (*In re James R.* (2009) 176 Cal.App.4th 129, 135.)

The court found true three allegations asserted under subdivision (b) of section 300. Count b-2 was based upon the same allegations of domestic violence and throwing things asserted in count a-1, discussed above. For the same reasons the evidence is insufficient to support the true finding on count a-1, the true finding on count b-2 is unsupported by substantial evidence.

Count b-1 was based upon the allegation that Father “has a history of alcohol abuse and is a current abuser of alcohol, which renders [him] incapable of providing regular care of the children.” The parties devote substantial portions of their briefs to whether Father is a substance abuser for purposes of section 300, subdivision (b). We need not reach that issue. Even if Father qualifies as a substance abuser, the evidence is insufficient to support the finding that his alleged abuse created a substantial risk of serious physical harm to the girls. When Father drank, he would, at his worst, throw things at walls and call Mother and the girls derogatory names. But in the last 16 years he had not thrown anything at anyone and never hit anyone. Moreover,

his planned or actual departure from the home reduced any risk of injury that might have existed had he stayed. Therefore, the evidence is insufficient to support the true finding on count b-1.

Count b-5 was based on the allegation that the parents “failed to regularly provide the children with adequate amounts of food,” thereby placing “the children at risk of physical harm and damage.” The evidence is sufficient to support the court’s true finding on this count.

The record indicates that, with respect to food at least, the house was divided between Father and Mark on one side and Mother and the girls on the other. According to A.C., Mother was responsible for providing the children with food and Father did not “give her money from his SSI.” B.C. stated that Father and Mark bought their own food and told the girls they were not to touch it and that this happened “all the time.” On the day of the social worker’s initial visit, when there was little in the house to eat, Mark had brought home some meat and told the girls it was not for them. B.C. further understood that the beans on the stove were for Father and Mark, not her. The day before, Mark and Father shared a burrito and gave nothing to the girls. Mother stated that her \$183 was “not enough” to get her and the girls through the month, and B.C. reported that she went hungry every month. Father, meanwhile, kept a small refrigerator stocked with beer.

This evidence demonstrates that the situation was, at times, worse than merely failing to provide Mother with money for food. Mother stated that Father had prohibited the girls from eating and withheld food as a form of punishment. Although she said Father had not done that recently, the girls indicated that Father and Mark continued to withhold food.

Father argues that the girls were not malnourished and suggests that there is no evidence that the lack of food posed a substantial risk of physical harm or illness. We disagree. There is evidence that the children “go hungry” every month. The evidence also shows that Father left or was about to leave the household and would refuse to provide any support to Mother and the girls, even for shelter. Although no

evidence indicates that the girls had yet been ill or physically harmed by the lack of food, adequate food is undeniably essential to physical health and childhood development. The court thus reasonably could conclude that withholding food, allowing the girls to go hungry, and Father's lack of support for the girls going forward created a substantial risk of physical harm or illness.

### **DISPOSITION**

The order is affirmed with directions for the juvenile court to (1) strike the jurisdictional findings against Father in counts a-1 and b-2 based on domestic violence and count b-1 based on alcohol abuse, and (2) strike the order that Father not reside in the family home.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

BENDIX, J. \*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.