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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re DAVID J. et al., Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JOSÉ J.,

Defendant and Appellant.

D062478

(Super. Ct. Nos. NJ14618B, C)

APPEAL from judgments of the Superior Court of San Diego County, Blaine K. Bowman, Judge. Affirmed.

José J. appeals judgments declaring his son, David J., and daughter, Lizbeth J., dependents of the juvenile court and removing them from the custody of José and his wife, Carmen L. José challenges the court's jurisdictional finding that David was at risk of sexual abuse based on José's sexual abuse of David's half-sister, Angie H. (Welf. &

Inst. Code, § 300, subds. (d), (j); undesignated section references are to this code.) We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

José and Carmen are the parents of two-year-old David and one-year-old Lizbeth. Carmen is also the mother of five-year-old Angie, but José is not her father. Angie nevertheless calls him "daddy."

In April 2012, the San Diego County Health and Human Services Agency (the Agency) received a telephone call from Angie's maternal grandmother, who reported that she found multiple bruises on Angie's arms and that Angie told her José hit her and touched her genitalia and buttocks. A nurse examined Angie later that day at an Agency assessment center and found bruises on her arms, legs and left thigh. Angie told the nurse José hit her with his fists and touched her genitalia. Angie later told a social worker that José hit her and Lizbeth and that Carmen saw José do this. Angie pointed to the groin area on a diagram and told a different social worker, "My daddy touched me there."

Based on these reports and findings, the Agency filed section 300 petitions on behalf of David and Lizbeth. (The Agency also filed a separate petition on behalf of Angie, but that is not at issue on this appeal.) The Agency alleged José physically and sexually abused Angie, and, based on that abuse, David and Lizbeth were at substantial risk of abuse. (§ 300, subds. (a), (d), (j).)

At a detention hearing held the same day the petitions were filed, the juvenile court ordered David and Lizbeth removed from the custody of José and Carmen and

placed in a licensed foster home. The court also set a jurisdictional and dispositional hearing.

The Agency submitted a jurisdiction/disposition report before the hearing, which included a summary of a social worker's interviews of José and Carmen. José admitted he had grabbed Angie and hit her with a belt for disciplinary reasons, but claimed Carmen told him to do so. He stated Carmen's family advised him to discipline Angie by "giv[ing] her a belting . . . a good one." José denied ever sexually abusing Angie. Carmen admitted José had grabbed Angie and hit her with a belt for disciplinary reasons, but Carmen denied she told him to do so. Carmen also stated she did not believe José had sexually abused Angie.

At the jurisdictional and dispositional hearing, José requested trial be set on both jurisdictional and dispositional issues. Carmen requested trial be set on dispositional issues only. The juvenile court bifurcated the trial and heard the jurisdictional issues first.

At the trial of the jurisdictional issues, José conceded the allegations of physical abuse of Angie but disputed those of sexual abuse. The court received in evidence, without objection, the Agency's detention and jurisdiction/disposition reports (with related attachments and addenda), and medical records from a hospital at which Angie was interviewed and examined. The court heard testimony from a social worker who conducted a forensic interview of Angie at the hospital. The interviewer testified that Angie told her José hit Angie with a belt and touched her genitalia on multiple occasions and that Carmen witnessed this abuse. After considering this testimony and the

documentary evidence and hearing closing arguments of counsel, the juvenile court found the allegations José had sexually abused Angie were true based on clear and convincing evidence. The court also sustained the allegations that, based on the sexual abuse of Angie, David and Lizbeth were at risk of abuse.

At the trial of the dispositional issues, the parties stipulated the juvenile court could consider the evidence received at the trial of the jurisdictional issues, and the court heard testimony from a social worker and the children's paternal grandmother regarding placement of the children. At the conclusion of the trial, the court declared David and Lizbeth dependents of the court under the supervision of the Agency, removed them from parental custody, and ordered them placed in a licensed foster home with supervised visitation with their parents at least twice a week. The court also ordered reunification services for José and Carmen, and set review hearings.

José appealed the judgments. (See §§ 360 [order declaring child dependent of court in § 300 proceeding is a judgment], 395, subd. (a)(1) [judgment in § 300 proceeding is appealable]; *In re Eli F.* (1989) 212 Cal.App.3d 228, 233 ["In a case brought under section 300, the juvenile court's dispositional order is a judgment."].)

DISCUSSION

Although José referenced both judgments in the notice of appeal, in his appellate briefing he challenges only the jurisdictional finding that David was at risk of sexual abuse based on José's sexual abuse of Angie. As we shall explain, we need not address this issue because the finding that David was at risk of physical abuse based on José's

physical abuse of Angie — a finding José conceded below — was sufficient to support the juvenile court's jurisdiction over David.

As noted above, the Agency filed a section 300 petition on behalf of David in which it alleged he was at substantial risk of abuse based on two grounds, José's sexual abuse of Angie (count 1) and José's physical abuse of Angie (count 2). (See § 300, subs. (a), (d), (j).) The general rule governing appellate review of jurisdictional findings in such cases is this:

"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; accord, *In re Ashley B.* (2011) 202 Cal.App.4th 968, 979.)

In other words, "[a]s long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate." (*In re Ashley B.* at p. 979.)

Here, the Agency reports stating that José admitted he hit Angie with a belt, the social worker's testimony that Angie stated José hit her with a belt on multiple occasions, and the medical records and photographs documenting Angie's bruised limbs — all of which were received in evidence without objection — constituted substantial evidence José physically abused Angie. (See *In re Sheila B.* (1993) 19 Cal.App.4th 187, 199 ["Substantial evidence is evidence that is 'reasonable, credible, and of solid value'; such that a reasonable trier of fact could make such findings."].) From the combination of that abuse, José's admitted frustration with Angie's failure to respond to verbal discipline, and

his family-reinforced belief in the propriety of "belting" a small child as a disciplinary method, the juvenile court reasonably could conclude there was a substantial risk José would also abuse David. (See § 300, subd. (j); *In re Maria R.* (2010) 185 Cal.App.4th 48, 64 [juvenile court must "consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm"].) In any event, at the jurisdictional hearing, José conceded the allegations he physically abused Angie were sufficient to support jurisdiction over David. Accordingly, we affirm the juvenile court's assertion of jurisdiction over David on the basis of José's physical abuse of Angie (§ 300, subs. (a), (j)), and need not consider whether jurisdiction was also proper on the basis of José's sexual abuse of Angie (§ 300, subs. (d), (j)). (*In re Ashley B.*, *supra*, 202 Cal.App.4th at p. 979.)

José acknowledges "jurisdiction will exist under the sustained but unchallenged . . . counts," but he nevertheless urges us to "hear [his] challenge to the finding David was at risk of sexual abuse." (Boldface omitted.) José contends the "jurisdictional findings with respect to his son, if erroneous, could have severe and unfair consequences in future family law and dependency proceedings" and "have had a direct and immediate impact on [his] relationship with David." Although we have discretion to review alternative jurisdictional findings (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1493), we decline to exercise that discretion here for two reasons.

First, José "has not suggested a single specific legal or practical consequence from [the challenged jurisdictional] finding, either within or outside the dependency proceedings." (*In re I.A.*, *supra*, 201 Cal.App.4th at p. 1493.) Although José asserts the

finding based on his sexual abuse of Angie has affected his relationship with David and could affect future legal proceedings, he does not explain how they have been or could be affected, or cite any evidence to support these assertions. These defects are not cured by José's citation of *In re Carmaleta B.* (1978) 21 Cal.3d 482 as the sole support for his assertion that "reversal of the disputed jurisdictional findings would result in a different dispositional and case plan outcome," and thereby relieve the "severe and unnecessary prejudice to [his] parental interests" caused by the finding. In *Carmaleta B.*, reversal of a judgment terminating parental rights and remand for a new trial were required because neither of the two statutory bases on which the trial court relied was sufficient by itself to support the judgment. (*Id.* at pp. 495-496.) Here, by contrast, the juvenile court's finding that David was at risk of abuse based on José's physical abuse of Angie was sufficient by itself to support the jurisdictional and dispositional orders; the challenged finding based on José's sexual abuse of Angie was unnecessary to the result.

"Under these circumstances, the issues [José] raises are "'abstract or academic questions of law"' [citation], since we cannot render any relief to [him] that would have a practical, tangible impact on his position in the dependency proceeding. Even if we found no adequate evidentiary support for the juvenile court's findings with respect to [the risk of abuse to David based on José's sexual abuse of Angie], we would not reverse the court's jurisdictional and dispositional orders nor vacate the court's assertion of personal jurisdiction over his parental rights." (*In re I.A.* at p. 1492.)

Rather, "[b]ecause jurisdiction was proper on other grounds, [José] cannot expect a more favorable result, and we need not consider [his] appeal." (*In re Ashley B.*, *supra*, 202 Cal.App.4th at p. 979.)

Second, there is no need for us to issue an opinion on the issue José raises on appeal: "whether the singular fact that a father sexually abused a daughter was sufficient by itself to support a finding that the son was at risk of being sexually abused." José acknowledges the Courts of Appeal are presently divided on this issue. (Compare *In re Maria R.*, *supra*, 185 Cal.App.4th at p. 68 [without evidence father had sexual interest in male child, court could not conclude father's sexual abuse of daughters established son was at substantial risk of sexual abuse] with *In re P.A.* (2006) 144 Cal.App.4th 1339, 1345-1347 [evidence father molested daughter was sufficient to support finding younger sons were at substantial risk of sexual abuse].) Our Supreme Court recently granted review in a case to resolve the conflict, however (see *In re I.J.* (2012) 207 Cal.App.4th 1351, review granted Sept. 19, 2012, S204622), and its decision will definitively resolve the matter (see *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455 [California Supreme Court decisions "are binding upon and must be followed by all the state courts of California"]). We therefore decline to exercise our discretion to decide the issue in this case.

DISPOSITION

The judgments are affirmed.

IRION, J.

WE CONCUR:

McCONNELL, P. J.

AARON, J.