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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re D.P., a Person Coming Under the Juvenile Court Law.	B301135 (Los Angeles County Super. Ct. No. 19CCJP00973B)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. T.P. et al., Defendants and Appellants.	

APPEALS from orders of the Superior Court of Los Angeles County, Craig Barnes, Judge. Dismissed as moot.

Megan Turkat-Schirn, under appointment by the Court of Appeal, for Defendant and Appellant T.P.

Landon Villavaso, under appointment by the Court of Appeal, for Defendant and Appellant Y.G.

Mary C. Wickham, County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

T.P. (father) and Y.G. (mother) appeal from the juvenile court's order finding jurisdiction over their now two-year-old son D.P. (the child) under Welfare and Institutions Code section 300, subdivision (b)(1)[1] and order of a period of informal supervision by the Los Angeles County Department of Children and Family Services (Department). Because the juvenile court terminated jurisdiction over the child during the pendency of the parents' appeals, we dismiss the appeals as moot.

II. BACKGROUND[2]

On February 5, 2019, the parents took the child, then two months old, to the hospital because he was having trouble breathing. A chest x-ray revealed possible viral bronchitis or

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[1] All statutory references are to the Welfare and Institutions Code unless otherwise stated.

[2] As we dismiss the parents' appeals on a ground not dependent on the underlying facts, we provide a limited background for context.

pneumonia and a healing rib fracture. The parents were surprised to learn of the fractured rib and could not explain how it occurred. Hospital staff notified the Department and the police.

On February 13, 2019, the Department filed a petition that alleged the child and his then five-year-old sister, B.P., were described by section 300, subdivisions (a), (b), and (j).[3] As to the child, the petition alleged that he had suffered a rib fracture; the parents' explanation for the fracture was inconsistent with the injury; and such an injury would not occur but for the parents' deliberate, unreasonable, and neglectful acts. At the detention hearing the following day, the juvenile court denied the Department's request that the children be detained and released them to the parents under the Department's supervision.

Dr. Karen Imagawa, the Director of the CARES team at Children's Hospital Los Angeles and an expert in forensics and suspected child abuse, reviewed the child's medical records and prepared a report.[4] According to Dr. Imagawa, rib fractures are uncommon injuries in healthy infants with normal bone density. Such injuries have a high degree of specificity for non-accidental trauma and are generally due to a significant compression of the chest from front to back on an unsupported back. Due to the pliability of an infant's rib cage, significant force is necessary to

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[3] Because the juvenile court ultimately dismissed the petition as to B.P. and she is not a subject of the parents' appeals, we do not recite the allegations as to her.

[4] Dr. Imagawa also testified at the jurisdiction and disposition hearing. We limit our recitation of the evidence Dr. Imagawa provided to her report.

fracture a healthy infant's rib. A non-offending caregiver would not necessarily know that an infant's crying or irritability was related to a rib fracture and might attribute such crying or irritability to causes like fatigue or colic.

Dr. Thomas Grogan, a pediatric orthopedic surgeon and an expert in child abuse forensics, also reviewed the child's medical records and prepared a report.[5] Dr. Grogan explained that rib fractures such as the child's typically result from a compressive-type force. That force could be from someone picking up a child incorrectly and applying too much pressure to the chest. Even a child as young as two years old could supply the force necessary to fracture a rib. Absent an x-ray, a caregiver who did not cause such an injury would never realize a child had a fractured rib. Because there was no evidence of trauma in this case, the child's rib fracture could have been sustained accidentally, but Dr. Grogan could not rule out that the injury resulted from intentional conduct.

At the jurisdiction hearing, on September 20, 2019, the juvenile court sustained the section 300, subdivision (b)(1) count as amended—it struck the language that the child's rib fracture resulted from "deliberate" or "unreasonable" conduct by the parents.[6] The court stated, among other things, "I think this is—

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[5] Like Dr. Imagawa, Dr. Grogan also testified at the jurisdiction and disposition hearing. We limit our recitation of the evidence Dr. Grogan provided to his report.

[6] As amended by the juvenile court, the sustained petition alleged, "On or about 02/06/2019, the two-month old child . . . was medically examined and found to be suffering from a detrimental condition consisting of a healing right posterior 7th rib fracture. [M]other['s] explanation of the manner in which the child

at its most—a possible neglectful act in the way this compression fractured occurred." It dismissed the remaining counts. As for disposition, the juvenile court ordered the child to remain released to the parents under the Department's informal supervision pursuant to section 360, subdivision (b) for a period consistent with section 301, namely, six months. (§§ 301; 16506.)

On September 30, 2019, father timely filed his notice of appeal. On October 18, 2019, mother timely filed her notice of appeal. The Department did not file a petition pursuant to section 360, subdivision (c) or otherwise bring the case back before the juvenile court. Accordingly, the parties do not dispute that the court's jurisdiction has since terminated.

III. DISCUSSION

In their appeals, father and mother challenge the juvenile court's jurisdictional and dispositional orders. We requested that the parties submit supplemental letter briefs addressing whether the parents' appeals are moot.

"As a general rule, an order terminating juvenile court jurisdiction renders an appeal from a previous order in the

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sustained the child's injury is inconsistent with the child's injury. [F]ather . . . has not provided an explanation of the manner in which the child sustained the child's injury. Such injury would ordinarily not occur except as the result[] of neglectful acts by the child's mother and father, who had care, custody and control of the child. Such neglectful acts on the part of the child's mother and father endanger the child's physical health, safety and well-being, create a detrimental home environment and place the child . . . at risk of serious physical harm, damage, danger and physical abuse."

dependency proceedings moot. [Citation.] However, dismissal for mootness in such circumstances is not automatic, but 'must be decided on a case-by-case basis.'" (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.) "[T]he critical factor in considering whether a dependency appeal is moot is whether the appellate court can provide any effective relief if it finds reversible error." (*In re N.S.* (2016) 245 Cal.App.4th 53, 60.)

A court ordinarily will dismiss an appeal when it cannot grant effective relief, but may "exercise its inherent discretion to resolve an issue when there remain 'material questions for the court's determination' [citation], where a 'pending case poses an issue of broad public interest that is likely to recur' [citation], or where 'there is a likelihood of recurrence of the controversy between the same parties or others.'" (*In re N.S., supra*, 245 Cal.App.4th at p. 59.) The party seeking such discretionary review, however, must demonstrate the specific legal or practical negative consequences that will result from the jurisdictional findings they seek to reverse. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1493.)

The parents contend their appeals are not moot because the jurisdictional finding[7] that they were responsible for the child's fractured rib will impair their ability to serve as a placement option for other family members under section 361.3, subdivision (a)(5). (See *In re Drake M.* (2012) 211 Cal.App.4th 754, 763 [generally, an appellate court will exercise its discretion to reach the merits of a challenge to any jurisdiction finding if that finding

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[7] In their supplemental letter briefs, the parents do not contend that their appeal of the juvenile court's dispositional order is not moot. Father expressly concedes his appeal as to that order is moot.

"'could have other consequences for [the appellant], beyond jurisdiction' [citation]"].) Under subdivision (a)(5), when considering the appropriateness of a relative placement, a social worker must consider, among factors, "[t]he good moral character of the relative and any other adult living in the home, including whether any individual residing in the home has a prior history of violent criminal acts or has been responsible for acts of child abuse or neglect." The parents do not assert that they have relatives that might be subject to a placement under section 361.3, and thus have failed to identify a specific legal or practical negative consequence resulting from the jurisdictional finding. (*In re I.A., supra*, 201 Cal.App.4th at p. 1493.)

The parents also contend that the jurisdictional finding subjects them to registration on the Child Abuse Central Index (CACI) under the Child Abuse and Neglect and Reporting Act (the Act) (Pen. Code, § 11164 et seq.). The parents allege that registration on CACI is stigmatizing and will negatively impact their ability to participate in their children's extracurricular school activities or athletic endeavors; mother also alleges that CACI registration will jeopardize her employment as a teacher and limit future employment opportunities involving children. Thus, apart from jurisdiction, the parents contend their challenge to the juvenile court's section 300, subdivision (b)(1) finding involves a dispute as to which this court can grant effective relief. We disagree.

Under the Act, the Department is required to report to the Department of Justice substantiated cases of known or suspected

child abuse or severe neglect.[8] (Pen. Code, § 11169, subd. (a).) A report is substantiated and the Department's reporting duty is triggered when, based on evidence, *an investigator* determines it is more likely than not that child abuse or neglect has occurred. (Pen. Code, § 11165.12, subd. (b), italics added.) Thus, the Department's reporting duty is not dependent on a juvenile court sustaining a section 300 petition.[9]

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[8] Penal Code section 11165.6 defines "'child abuse or neglect' [as] physical injury or death inflicted by other than accidental means upon a child by another . . . ."

Penal Code section 11165.2 of the Act defines "'[s]evere neglect' [as] the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. 'Severe neglect' also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by [Penal Code s]ection 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care."

[9] The parents have not demonstrated that the Department here made a CACI referral even though under Penal Code, section 11169, subdivision (c), the Department would have been required to provide written notice to the parents had it made such a referral.

IV. DISPOSITION

The appeals are dismissed as moot.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

KIM, J.

I concur:

BAKER, J.

***In re D.P./ DEPARTMENT OF CHILDREN AND FAMILY SERVICES v. T.P. et al.*, B301135**

RUBIN, P. J., Dissenting:

In lieu of filing the type of Respondent's Brief typical of dependency cases, county counsel on behalf the Department of Children and Family Services (Department) filed a four-page, informal letter brief. In its letter, county counsel stated that the Department did not oppose the reversal of the jurisdictional finding "because of the parents' cooperation and their successful completion of the section 360, subdivision (b) disposition [informal supervision by the Department]." Months later county counsel did an about-face that would make any staff sergeant proud. In response to a question from this court, the Department took the position that this appeal was actually moot. No dependency proceedings had occurred in the interim to explain the change of position. Today, the court's opinion accepts the Department's U-turn.

This case stands out not only for the inconsistent positions the Department has taken to the great detriment of D.P.'s parents (and likely to D.P.), but in three other respects. First, in my view, the juvenile court's jurisdictional findings were based on insufficient evidence, requiring reversal. Second, the majority concludes that a parent's effort to avoid being labeled a child abuser is not sufficient to preserve appellate jurisdiction and decide an appeal on its merits. Finally, as county counsel acknowledged in its letter of nonopposition to reversal, the parents' cooperation with the authorities during the time they were placed on informal supervision by the juvenile court was

exemplary. Taking this latter point first, both parents enrolled in parenting education classes and counseling. Mother participated in sixteen sessions of individual counseling, and nine sessions of family counseling, and completed a 20-week parenting program. Mother's therapist provided a report stating mother continued to remain highly motivated, was engaged in treatment, and demonstrated good insight and an excellent ability to parent her young children. Father completed ten sessions of a parenting program and five months of weekly individual counseling. Father's therapist noted father had made "steady progress" and demonstrated good insight and a very good ability to parent young children. How frequently have we seen parents struggle with or even ignore the Department's directives? Not here.

Insufficient Evidence

This family came to the Department's attention when a chest X-ray of two-month-old son revealed a healed rib fracture that the parents could not explain. The court received evidence from two physicians on potential causes of son's injury: one doctor opined the injury was likely non-accidental; the other concluded the injury could be accidental, but he could not rule out an intentional act.[1] This conflict, of course, does not establish

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[1] Both doctors testified on what imaging of the son did or did not reveal. There is apparently some debate on the validity of this forensic technique. (See Dr. Patrick Barnes, *Child Abuse-Nonaccidental Injury (Nai) and Abusive Head Trauma (Aht)-Medical Imaging: Issues and Controversies in the Era of Evidence-Based Medicine* (2017) 50 U. Mich. J.L. Reform 679, 681 ["[I]maging can't distinguish skeletal injury [in infants] due to non-accidental trauma from that due to accidental injury or from

that evidence is legally insufficient. Courts are often called upon to assess the credibility and persuasiveness of competing expert witnesses. I observe only that the juvenile court expressly found the parents' expert, Dr. Thomas Grogan, more persuasive. This finding provides context for the additional findings and conclusions that the court made.

In my view, the juvenile court's own words when it sustained the allegation of neglect demonstrate that the evidence was insufficient:

"What I have is an unanswered explanation as to how this fracture occurs from a compression force, but I don't lay at the parents' feet because I don't think they affirmatively through a deliberate act or some act on their part or omission on their part caused the injury. And it may, in fact, be that while the child is in the care of the maternal grandmother or some other event occurred that was outside their view that this compression force was applied."

Then after explaining why the court assumed jurisdiction, the court stated:

"*Again, I think this is—at its most—a possible neglectful act in the way this compression fracture occurred*." (Italics added.)

The court thus finds that (1) the origin of the injury has not been demonstrated; (2) this lack of explanation is not the parents' fault; (3) because the parents did not "affirmatively through *a*

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those due to predisposing or medical conditions, including the bone fragility disorders. There is a differential diagnosis for the bone abnormalities, and that differential diagnosis has been reported as far back as you can go in both the child abuse literature and the bone health literature"].)

deliberate act or some act on their part *or omission* on their part cause[] the injury"; (4) it may be that while the child was in the care of the "maternal grandmother or some other event occurred that was *outside their view* that this compression force was applied"; and (5) at most this was "a possible neglectful act." (Italics added.) These findings are not the stuff of substantial evidence.

As California appellate courts have held innumerable times, "possible" evidence is not substantial evidence. "[A] mere possibility is nothing more than speculation, and speculation does not amount to substantial evidence." (*People v. Ramon* (2009) 175 Cal.App.4th 843, 851.) A finding of "a possible neglectful act" is antithetical to substantial evidence of that act. "To be sufficient, evidence must of course be substantial. It is such only if it 'reasonably inspires confidence and is of "solid value." ' " (*People v. Perez* (1992) 2 Cal.4th 1117, 1133 [internal quotes omitted].) Substantial evidence "is not synonymous with any evidence. A decision supported by a mere scintilla of evidence need not be affirmed on appeal. Furthermore, '[w]hile substantial evidence may consist of inferences, such inferences must be "a product of logic and reason" and "must rest on the evidence"; inferences that are the result of mere speculation or conjecture cannot support a finding. The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.' " (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393–1394 [citations omitted].)

In my view there was insufficient evidence to support the jurisdictional finding.

Mootness

I also disagree that this appeal is moot. I look initially to the oft-cited dependency case on the subject, *In re Drake M.* (2012) 211 Cal.App.4th 754 *(Drake M.*). There the court refused to dismiss the appeal as nonjusticiable because "we generally will exercise our discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) 'could have other consequences for [the appellant], beyond jurisdiction' [citation]." (*Id.* at pp. 762–763.)[2] This case falls squarely under *Drake M.'s* third category and arguably its second as well.

Drake M's third factor states plainly that an appeal is not moot if a resolution would have consequences beyond jurisdiction, which is the situation here. The second factor is stated in the alternative: "could be prejudicial to the appellant *or* could potentially impact the current or future dependency proceedings." (Italics added.) *Drake M.* thus holds that the prejudice to a parent if the appellate court does not decide the appeal on its

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[2] "Mootness" and "nonjusticiable" may not be synonymous but courts apply both to avoid addressing the merits of an appeal when a decision will have no real consequence. "An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief." (*In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054.)

merits does not have to be tethered to present or future dependency proceedings.

A dismissal of this case on mootness grounds takes us far afield from the foremost purposes of the dependency system—the protection of children and the preservation of the family. (Welf. & Inst. Code, § 202, subd. (a).) Rather than acting to protect the child and support the family's well-being, to preserve the jurisdictional finding here creates potentially serious challenges for the parents in their efforts to provide for their family and actively participate in their child's upbringing.

Mother, an elementary school teacher, argues that the sustained finding of neglect against her will limit her ability to remain employed. That makes sense. Father contends that the court's sanctioning of the neglect finding will prevent him from volunteering in school-related activities for their children. That also makes sense.

We do not have to take the parents' word for this because we need look no further than California law for validation. The Penal Code mandates that the Department report every substantiated claim of child abuse or severe neglect to the Department of Justice for inclusion on the child abuse central index (CACI). (Pen. Code, §§ 11169, subd. (a) & 11170, subd. (a)(1).) The CACI is made available to government agencies, including social services departments that provide licenses for employment related to childcare and school districts which conduct background checks on volunteers. (Pen. Code, § 11170, subds. (b)(3), (b)(4); see also Los Angeles Unified School District Policy No. BUL-050298 [the school district's policy is to fingerprint certain volunteers to check for inclusion on the CACI].) If the juvenile court's finding of neglect is affirmed

parents lose their right to challenge their inclusion on the CACI. (Pen. Code, § 11169, subds. (d) & (e).) Here, mother and father now have sustained a jurisdictional finding of child abuse against them, apparently disqualifying them from challenging the CACI entries.

But CACI aside, common sense tells us that no parent wants to be branded a child abuser, which is exactly what happened in this case. These consequences are neither speculative nor unreasonable, and they are inconsistent with a declaration that this appeal is "moot."

RUBIN, P. J.