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Supreme Court of California
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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE B.P., et al. Persons Coming Under the Juvenile Law	)	Supreme Court Case No.
	)	
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,	)	Court of Appeal Case Nos. B301135
Petitioner and Respondent,	)	Superior Court Case No. 19CCJP00973
v.	)	
	)	
TWAIN P. Objector and Appellant.	)	

APPEAL FROM THE JUDGMENT OF THE
JUVENILE COURT OF LOS ANGELES COUNTY
Honorable Craig Barnes, Judge Presiding

PETITION FOR REVIEW

After the Unpublished Decision of the Court of Appeal, Second Appellate District, Division Five, Affirming the Judgment of the Juvenile Court

MEGAN TURKAT-SCHIRN
269 S. Beverly Drive, #193
Beverly Hills, CA 90212
EMAIL: *schirn@sbcglobal.net*
TEL: (310)279-0003
Bar. No. 169044

Attorney for Appellant father, T.P.
By appointment of the Court of Appeal

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	)	Superior Court Case No. 19CCJP00973
v.	)	
	)	Appellant Father's Petition for Review
TWAIN P. Objector and Appellant.	)	

TO THE HONORABLE CHIEF JUSTICE TANI GORRE CANTIL-SAKAUYE AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

This petition for review follows the unpublished decision of the Court of Appeal, Second Appellate District, Division Five, filed on February 10, 2019. A copy of the opinion is attached to this petition as an appendix. Pursuant to California Rules of Court[1], rule 8.500 (a)(1) of the appellant, Twain P., respectfully requests this Court review the unpublished decision of the Court of Appeal, Second Appellate District, Division 5, which affirmed the orders of the juvenile court in a split opinion, with a dissent by Justice P.J. Rubin. Review is sought pursuant to rule 8.500

[1] All rule references are to the California Rules of Court unless otherwise noted.

(b)(1), to settle an important question of law and provide uniformity of decision.

Issues Presented

1. Can jurisdictional findings under Welfare and Institutions Code[2], section 300, subdivision (b) be supported by a juvenile court's finding there was at most a "possible neglectful" act by the parents?

2. Is a parent's effort to avoid being labeled a child abuser sufficient to preserve appellate jurisdiction and decide an appeal on its merits?

3. Does a parent's exemplary cooperation with authorities causing county counsel's letter of non-opposition to reversal compel consideration of the appeal on its merits?

Necessity for Review

The majority opinion of the Court of Appeal in this case construed section 300, subdivision (b) to be satisfied by a finding of only a "possible neglectful act" by a parent, thus departing from established decisions and from the dissenting opinion that substantial evidence of neglectful conduct by the parent is required to affirm a juvenile court's jurisdictional finding. This court should grant review to provide uniformity of decision in the lower courts. (Rule 8.500 (b)(1).)

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[2] All statutory references to the Welfare and Institutions Code unless otherwise noted.

Statement of the Case

Protective Custody Warrant

On February 8, 2019, the social worker's request for a protective custody warrant was denied by Judge Rudolph Diaz. (1 CT 11.)

Section 300 Petition

On February 13, 2019, the Department filed a non-detained petition under section 300, subdivisions (a), (b), and (j), on behalf of minors Britney P. (born November 2013) and Dalton P. (born December 2018). (1 CT 1-3.)

The petition alleged that on or about February 6, 2019, then two-month old Dalton was medically examined and found to be suffering from a healing right posterior 7th rib facture for which the mother's explanation was inconsistent with the injury and the father has not provided an explanation and that such injury would not occur but for deliberate, unreasonable and neglectful acts by the mother and father. (1CT 4.) That on prior occasions the mother physically abused the child Britney by striking the child's buttocks with a ruler and her hand and father failed to take action to protect the child; that on prior occasions the maternal grandmother struck the child Britney's buttocks with a ruler and her hand and the parents failed to protect the child.(1 CT 3-7.) That the neglectful acts as to Dalton and physical abuse of Britney, places the sibling at risk of harm, damage, and abuse. (1 CT 4-7.)

Detention Hearing

At the February 14, 2019 detention hearing, the juvenile court found a prima facie case and ordered the children to remain released to the parents under the supervision of the Department. (1 CT 105.)

Jurisdiction and Disposition

On August 20 and September 20, 2019, the juvenile court heard testimony from Dr. Karen Imagawa, an expert in forensics and suspected child abuse, and Dr. Thomas Grogan, an expert in forensics in child abuse and child orthopedics, followed by argument. (1 RT 59, 81; 2 CT 478-479, 481.) The Department asked the court to sustain the petition as to Britney and Dalton as to physical abuse and medical neglect or intentional injury. (1 RT 94.) Counsel for the minors and parents argued to dismiss the petition. (1 RT 97-103.)

The juvenile court made jurisdictional orders to dismiss the petition as to the minor Britney with prejudice for insufficient evidence. (1 RT 113-117; 2 CT 482.) As to the minor Dalton, the juvenile court sustained count B-1 (failure to protect) as amended that there was at most a "possible neglectful act" and dismissed all other counts, finding insufficient evidence to jurisdiction under support subdivision (a) and (j). (1 RT 113, 120; 2 CT 483.)

As to the disposition, counsel for the parents wanted a termination of jurisdiction as the parents had already completed the court ordered case-plan. The parents and minor's counsel then submitted under section 360, subdivision (b) for the disposition. (1 RT 123-124.) The juvenile court ordered the

minor Dalton to remain released to his parents under the supervision of the Department pursuant to section 360 for a period of supervision consistent with section 301. (1 RT 124; 2 CT 484.)

Notice of Appeal

On September 30, 2019, father filed a notice of appeal from the declaration of dependency under section 360. (2 CT 485-486.)

On October 18, 2019, mother filed a notice of appeal. (2 CT 487.) On January 21, 2019, mother's appeal was dismissed for failure to file an opening brief and upon the request of mother's counsel an extension of time for filing Appellant Mother's Opening Brief was granted.

On April 9, 2020, during briefing for the appeal, Respondent DCFS submitted a letter in lieu of a respondent's brief noting non opposition to reversal of the jurisdictional finding "because of the parents' cooperation and their successful completion of the section 360, subdivision (b) disposition, DCFS does not oppose reversal of the jurisdictional finding".

On August 5, 2020, the case was submitted after oral argument was waived by the parties.

On October 30, 2020, the Court of Appeal vacated the prior cause submitted order and invited the parties to submit supplemental letter briefs on whether the appeal should be dismissed because the juvenile court dependency proceedings were terminated during the pendency of the appeal. The parties

then submitted letter briefs with appellant opposing dismissal and Respondent arguing in favor of dismissal.

Statement of Facts

A. Background and Petition

When proceedings arose, mother and father lived with their two children Britney and Dalton and maternal grandparents. (1 CT 14.) Mother and father worked, Britney attended pre-kindergarten and maternal grandmother assisted with childcare. The family had no prior child welfare history, no criminal history, and no prior issues with mental health, substance use or domestic violence. (1 CT 19.)

On or about February 6, 2019, an emergency referral was generated alleging the parents brought the child Dalton to the hospital for breathing problems. Dalton, then two months old, was medically examined, and a chest x-ray revealed possible viral bronchitis or pneumonia and an old, healing fractured rib. (1 CT 13-14, 44, 49, 51; 2 CT 341.)

The parents were surprised to learn of the fracture and did not have an explanation for how the child obtained the injury. (1 CT 14.) They denied any injuries, trips of falls as the child was two months old and could barely hold his head. (1 CT 122.) They indicated that he had been crying more the past 4 or 5 days and having difficulty sleeping, congestion and cough, which was why they brought him to the emergency room. The child was

diagnosed with pneumonia and flu. (1 CT 122.) The examining doctors suspected child abuse due to the nature of the injury and lack of explanation and contacted law enforcement. (1 CT 14.)

Dalton was transferred to Children's Hospital Los Angeles for further evaluation of the etiology of the old rib fracture and treatment for pneumonia. (2 CT 341.) He was hospitalized for five days and was treated for influenza and metapneumovirus bronchiolitis and received workup for a nonaccidental trauma evaluation. (2 CT 327.) On February 11, 2019, he was released to his parents. At that time, he was "gaining weight" and "happy." (2 CT 328.)

The social worker's referral investigation included an interview of Britney at her elementary school conducted in Mandarin and English. (1 CT 14.) Britney appeared healthy and well-groomed. She was enrolled in pre-k and reported mother and maternal grandmother have spanked her on the buttocks with a hand and a ruler in the past when she misbehaved. The last time she was spanked was a "long time ago" and she denied current physical discipline. (1 CT 14.) She did not witness any incidents of her baby brother falling. She felt safe and happy at home. She had no visible marks or bruises. (1 CT 14.)

The social worker spoke to mother using a Mandarin interpreter. Mother moved to the United States in 2005 to marry father. They have two children, and she was happy in her marriage. Maternal grandparents reside with her family and

help care for the children while she is at work. (1 CT 14.) Mother had no idea what happened to Dalton as to his fractured rib. She had noticed his breathing was not good which was why she took him to the hospital. After a few tests, they found out he had a fractured rib and that it was an old wound. (1 CT 14-15.) She recalled that after she delivered him via c-section there was an incident at the hospital where a nurse assisted in changing his diaper in an "angry way" and that the child cried when this nurse changed his diaper. She filed an incident report and spoke to the supervisor at the hospital. (1 CT 15.) Mother denied using corporal punishment and never hit her daughter with a ruler. (1 CT 15.) Father was frustrated and concerned that his young son was getting so many x-rays. (1 CT 15.) The parents' home was clean and well kept, with no safety issues. (1 CT 17.)

On February 7, 2019, the social worker spoke to CARES team nurse practitioner who found no other trauma or injuries but could not exclude non accidental trauma as a cause of the rib fracture. (1 CT 17, 64.) Several scenarios could have caused the injury, but the parents had no explanation. (1 CT 17.) Ms. McHale indicated the fracture was at least ten days old, or it would not show up on an x-ray. (1 CT 17.) The child would feel pain when lifted or having his diaper changed. (1 CT 17.) The nurse practitioner thought it "odd" that mother described Dalton as appearing irritable most of the time and that her daughter had been the same after birth. (1 CT 18.)

The February 14, 2019 Detention report recommended the juvenile court detain the children from their parents. (1 CT 11.)

B. Jurisdiction and Disposition Evidence

As of the April 9, 2019 Jurisdiction/Disposition report, the children remained released to the parents with no further evidence of abuse or neglect. The parents were cooperative and participating in pre-disposition services. (1 CT 117, 130.) Britney informed the social worker she went to school every day and her baby brother cries a lot when people change his diapers. Her grandmother changes his diaper and washes her hair. (1 CT 124.) Her parents only give her a time out when she does something wrong. (1 CT 125.) She responded "no" when asked if she was ever hurt after being hit by mother and that nobody at home hit her. (1 CT 125.)

Mother was enrolled in parenting and individual counseling. (1 CT 130-131; 2 CT 336.) She worked as a Chinese teacher at the MBC Education Center and at the Alhambra Montessori Kindergarten. (1 CT 130.) Mother told the social worker that Dalton was never in the care of anyone else. (1 CT 127.) Since Dalton was born, they observed something wrong with him and he seemed to be in pain. She was worried about it. (1 CRT 127.) She took him to two pediatricians, and they were not able to find what happened to him. (1 CT 128.) Mother then took Dalton to the emergency room for vomiting and breathing problems and were shocked to find out he had a healed fractured rib. (1 CT

128.) Dalton was currently not on any medication. (1 CT 128.) He went to a follow up appointment two days after his release from the hospital and everything was fine. He now looks normal and does not seem to be in any pain. (1 CT 129.) Mother did not know what happened to Dalton. (1 CT 129.)

The social worker informed mother that the Children's Hospital CARES team indicated that the fractured rib occurred at least 10 days from the day he was admitted to the hospital, and therefore not from when he was born two months ago. Mother questioned whether it was possible that the doctor who examined Dalton in January 2019, may have caused the injury because she observed Dr. Lam use two fingers to hit the baby's chest and mother thought Dr. Lam used a strong force for a baby when doing the physical exam because she heard a hitting sound. (2 CT 363-364.)

Father was employed as a driver and had enrolled in parenting and counseling. (1 CT 132, 141; 2 CT 390.) He did not know how Dalton had a rib fracture and had been very surprised to learn of the injury. He had never seen anything out of the ordinary with him. They took him to the hospital because he started to have a fever for a few days. He has never seen mother or maternal grandmother hit Britney. (1 CT 132-133.)

Maternal grandmother told the social worker that since Dalton came home from the hospital, he does not make a painful sound and stopped fussing. She did not know how Dalton got a

fractured rib. (1 CT 135.) She never saw any swelling or redness when she changed or bathed him. (1 CT 135.)

In a subsequent telephonic interview on March 22, 2019, the CARES team nurse practitioner indicated that "for sure" the rib fracture was not from Dalton's recent illness or from his birth. The fracture "only happened" in the care of his parents' home. (1 CT 137.) Maternal grandmother had recently started caring for the baby as mother returned to work part-time. (2 CT 281.) Ms. McHale noted that the baby was sleeping in mother's arms, easily arousable and appeared well nourished. (2 CT 283.) A skeletal survey revealed no additional fractures or abnormalities. (2 CT 284.)

Officer Flores from the Alhambra Police Department interviewed the family and medical staff and was unable to determine if any of Dalton's caretakers caused the injury to Dalton. (1 CT 139.)

The Department was assessing a 301 voluntary services contract for the family pending (1 CT 147-148.) Based on the receipt of the forensic report from HUB physician, Dr. Karen Imagawa at Children's Hospital Los Angeles, the Department determined that the rib fracture occurred between January 15 to February 6, 2019, while the child was in the care of his parents. (2 CT 364.) The Department was not in agreement with a 301 contract and recommended family maintenance services and that the parents participate in individual counseling, parent

education, family preservation services and maintain all medical appointments for the children. (2 CT 364, 469.) Last Minute Information for the Court dated July 12 and August 20, 2019, indicated that mother and father continued to attend family preservation, parenting and individual counseling. (2 CT 426, 428-434, 468-469.) Father's therapist noted father had made "steady progress" and demonstrated good insight and very good ability to parent young children. (2 CT 427.)

C. Expert Medical Evidence

(1) Dr. Karen Imagawa's Report dated February 11, 2019

Dr. Imagawa found the lateral right 7th rib fracture was 2-3 weeks old from the time the x-ray was taken on February 6, 2019. (2 CT 363, 365-366.) A lateral rib fracture is caused by either significant compression of the chest or blunt force trauma. (2 CT 363, 365.) The proposed birth incident at the hospital was not an adequate explanation for the injury based on timing and mechanism. At this time no known witnessed trauma has been reported so non-accidental trauma remains a concern and cannot be excluded. (2 CT 363.)

(2) Dr. Karen Imagawa's Report dated April 17, 2019

Dr. Imagawa's final report noted that rib fractures are uncommon injuries in otherwise healthy infants and have a high degree of specificity for non-accidental/inflicted trauma. (2 CT 393, 396-399.) Such injuries are generally due to a significant compression of the chest from front to back on an unsupported back, such as occurs when forcefully grasping and severely

squeezing the chest. (2 CT 398-399.) Lateral rib fractures can also result from a direct blow but are more usually caused by compression. (2 CT 398.)

It would be expected for a rib fracture to be painful but often there are no other signs of trauma such as bruising or swelling. A non-offending caregiver would not necessarily know that the child's irritability was related to the rib and could attribute it to other causes such as tired, irritable or colic. (2 CT 393.)

Dalton's medical history was summarized:

On December 27, 2018, Dalton was seen when 21 days old by primary care provider Dr. Wang due to concerns of vomiting milk after eating. The examination was unremarkable and feeding difficulties were diagnosed. Dr. Wang commented on parenting skills and noted that an "all knowing. Domineering maternal grandmother" was involved in the care of the child. (2 CT 396.)

On January 7, 2019, Dalton was next seen by primary care provider Dr. Lam, for a check-up and vaccines.

On February 1, 2019, Dalton was taken back to Dr. Lam due to vomiting after feeding, crying and a cough and diagnosed with an upper respiratory infection. (2 CT 396.)

On February 5, 2019, Dalton was taken to the emergency room for concerns of congestion and fever. (2 CT 396.) The examination noted upper airway congestion and no external signs of trauma. A respiratory panel was positive for influenza and pneumonia. (2 CT 397.) A chest x-ray revealed a single healing

7th rib fracture and evidence of possible viral bronchitis. (2 CT 397.) The family reported no known history of trauma. During his hospitalization, Dalton was treated with Tamiflu and discharged home with his parents.

Post discharge, he had a visit at the CARES clinic on February 21, 2019. He appeared well and was recovering from his illness. He was a well-nourished, well-developed and interactive infant. (2 CT 397.)

(3) Report by Dr. Thomas Grogan, dated May 22, 2019

Dr. Grogan evaluated all of the medical records and chest x-ray for Dalton. (2 CT 423.) His report noted that Dalton was seen at age two months for a viral like illness when a chest x-ray disclosed a solitary healing lateral 7th rib fracture. There were no other fractures or evidence of inflicted abuse. (2 CT 423.)

If left untreated, this type of injury goes on to uneventful healing without deformity, dysfunction and certainly without death. This type of injury is typically from a compressive type of force. (2 CT 423.) It could be the result of someone picking up the child incorrectly and applying too much pressure to the chest. Even a small child or sibling could cause the fracture. (2 CT 423.)

This type of fracture is not apparent to the caregiver who did not cause the injury. A caregiver would never realize the child had this facture unless an x-ray was performed. (2 CT 423.) Since there was no evidence of other inflicted trauma, this

specific injury could be accidental in nature, but it cannot be ruled out it was done intentionally. (2 CT 424.)

D. August 20 and September 20, 2019 Hearing

(1) Testimony of Dr. Karen Imagawa

Dr. Imagawa is employed at Children's Hospital and is a full time faculty at University of Southern California Department of Pediatrics. (1 RT 58.) She trains and teaches other doctors in child abuse cases. (1 RT 58.) She looked at the medical records for the minor Dalton. (1 RT 60.) The child presented with a healing lateral 7th right rib fracture. (1 RT 60-61.) It could be either from compression or from blunt force trauma. (1 RT 61.) This type of injury was not typically from falling. A rib fracture in a two-month old would not be occurring from normal daily handling in an otherwise healthy child. (1 RT 61, 65.)

The x-ray was about two to three weeks old from the date of the x-rays on February 6, 2019. Given that time frame, the diaper changing incident was too close to the initial birth. (1 RT 62.) She was not aware of any other explanation other than the diaper changing incident. (1 RT 63.) The pediatric radiologist felt that the fracture was within that two to three week time frame. It was ruled out that the injury could be two months old, from the date of birth. (1 RT 64.)

There would not necessarily be other injuries in the area. You actually end up not seeing bruises typically with rib fractures. (1 RT 64.) Holding the child a little tighter would not do this. It would have to be really significant compression. She was not

provided with a history of the child almost falling. (1 RT 67.) It would be more force than squishing an empty soda can. (1 RT 67.) The ribs are close together but not touching each other. (1 RT 68.)

Given that there was no accidental mechanism that has been provided, this appears to have been intentional. (1 RT 69.) Often with squeezing the child you will see a posterior rib fracture, depending on how the patient is being held and the pressure put on certain areas. With lateral rib fractures it can also be from blunt force trauma. (1 RT 71.) Blunt force trauma could cause bruising but not necessarily. (1 RT 71.)

A person handling the baby would not notice that the baby is crying because of a rib fracture. (1 RT 69.) A parent could not know the child has a rib fracture and not necessarily neglect the child. (1 RT 74.) The person that broke the rib would probably know that it was broken. (1 RT 74.)

When the child came back for follow up, the nurse practitioner felt the family was interacting well with the baby and had appropriate questions. (1 RT 75.) She was aware that the parents completed the 20-week parenting class and attended follow up appointments at their CARES clinic. (1 RT 76.)

(2) Testimony of Dr. Thomas Grogan

Dr. Grogan has a private practice for orthopedic surgery in West Los Angeles. (1 RT 79.) He has been on the faculty in UCLA and for the last 15 years has been acting as an expert in child dependency cases. (1 RT 80-81.) In this case, he reviewed the medical records and the report by Dr. Imagawa dated April

17, 2019. (1 RT 82.) The specific injury was a healing rib fracture of the right slightly posterior lateral 7th rib. (1 RT 83.)

The fracture probably occurred two to three weeks before the x-ray was taken. So the child was slightly smaller at that age. It would take 40 and 50 newtons of force, about the same amount of force or energy required to crush a soda can. (1 RT 84.) The number 40 to 50 newtons worth of force came from a study at the UCLA fracture lab using a New Zealand white rabbit. (1 RT 92.)

The fracture was caused by trauma. He believes it was a blunt-type trauma. There was no evidence of any other injury. (1 RT 84.) The only solitary injury identified in the chest x-ray taken for pneumonia was a single, solitary healing fracture. (1 RT 84.) In his opinion, it was typically compressive force. Typically lateral compression—someone picking the child up and compressing the two sides together. Especially in a child of this age, or roughly 5 or 6 kilograms, can certainly cause this fracture. (1 RT 85.)

When an unskilled caregiver lifts a small child there is no head control so as they go to lift up and the head would move, the natural tendency is going to be to try and stabilize the child. The first thing he would envision is a squeeze which would be enough to cause the fracture. (1 RT 86-86, 91.) The injury could have occurred unintentionally by someone picking up the baby and grasping too tight because perhaps the baby was slipping. (1 RT 86-87.) A five year old of rather small statute would be capable of doing this. The baby was about ten pounds at that time. (1 RT

91.) Anybody lifting the child up inappropriately could apply the hoop stress. (1 RT 92.)

Someone who was not around at the time of the injury would not notice any evidence of any injury. There is no bruising that would occur. (1 RT 86.) This injury would heal on its own if the parents had never taken the child to the doctor. It was healed when it was first observed. It would be pure, uneventful healing. (1 RT 86.)

A child suffering from pneumonia could potentially suffer such an injury from coughing. But usually there are multiple rib fractures, and it concurs with the disease process. (1 RT 89.) In this case, the pneumonia was brand new and the fracture had been there for at least a couple of weeks. (1 RT 89.)

Dr. Grogan agreed with Dr. Imagawa that the injury was probably a lateral compression, not anterior/posterior. It was a fairly low energy injury. (1 RT 90.) It is rare to see a single rib fracture as typically in inflicted intentional trauma you see multiple rib fractures, especially posterior rib fractures. (1 RT 93.)

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Argument

I.
Can jurisdictional findings under Section 300, subdivision (b) be supported by a juvenile court's finding there was at most a "possible neglectful" act by the parents?

In the dissenting opinion, Justice Rubin notes California appellate courts have held innumerable times that "possible" evidence is not substantial evidence. In this case, the juvenile court's jurisdictional findings were based on the conclusion that the evidence did not establish a "deliberate" or even "unreasonable" behavior or act by the parents and that their conduct was "perhaps, neglectful." (1 RT 121.) In reaching this conclusion, the juvenile court went on to strike any reference to "deliberate and unreasonable" in the sustained petition. (1 RT 121.) As stated in the dissenting opinion, "These findings are not the stuff of substantial evidence." The majority opinion sustaining the juvenile court's jurisdictional finding departs from established standards of proof required under section 300, subdivision (b).

The word "perhaps" is synonymous with "possibly" or "maybe" and stands in contrast to the term "substantial" which means "significant" or "considerable." As the often cited case *In re Savannah M.* (2005) 131 Cal.App.4th 1387, notes 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." (*Id*. at pp. 1393–139.)

Possible evidence has been specifically rejected as satisfying the burden of proof for substantial evidence as it "is nothing more than speculation, and speculation does not amount to substantial evidence." (*People v. Ramon* (2009) 175 Cal.App.4th 843, 851.) Merely speculative findings of a juvenile court are insufficient to support dependency jurisdiction. (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 992–993; *In re David M.* (2005) 134 Cal.App.4th 822, 828; *In re Albert T.* (2006) 144 Cal.App.4th 207, 217.) Evidence sufficient to support a finding that a child comes within the jurisdiction of the juvenile court under section 300, subdivision (b), requires proof that:

> The 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 willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, 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. (§300 (b).)

The statutory definition consists of three elements:

(1) neglectful conduct by the parent of one of the specified forms;

(2) causation; and (3) "serious physical harm or illness" to the child, or a "substantial risk" of such harm or illness. (*In re Rocco M.*(1991) 1 Cal.App.4th 814, 820.) In this case, there was no finding of neglect based on the specified forms, and there can be no finding of causation where the juvenile court specifically struck any reference to "deliberate or unreasonable" and only made a speculative finding of "possible neglect." (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 566–567.)

The Court of Appeal was not created merely to echo the determinations of the trial court. Substantial evidence is ... not merely an appellate incantation designed to conjure up an affirmance. To the contrary, it is essential to the integrity of the judicial process.... (*In re Carlos J.* (2018) 22 Cal.App.5th 1, 6–7, citing *Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.) Thus, review should be granted to address the juvenile court's erroneous application of section 300, subdivision (b).

II.
Is a parent's effort to avoid being labeled a child abuser sufficient to preserve appellate jurisdiction and decide an appeal on its merits?

The dissenting opinion disagreed that the appeal is moot as "common sense tells us that no parent wants to be branded a child abuser, which is exactly what happened in this case" and that the consequence of dismissing the appeal is "neither speculative nor unreasonable." (Dissenting Opinion at pp. 2-3.) The majority opinion disagreed and found that appellant "failed

to identify a specific legal or practical negative consequence resulting from the jurisdictional finding." (Opinion at p. 6.) In reaching this result, the majority concluded that being labeled a child abuser was not a negative consequence worthy of review. It can be safe to say that no parent wants to have been adjudicated to be a child abuser, so it follows that having such a label is "practical negative consequence."

Both the majority and dissenting opinion rely on *In re Drake M.* (2012) 211 Cal.App.4th 754 to address the issue of mootness. In *Drake M.*, the court declined to dismiss an appeal as nonjusticiable when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings; or (3) could have other consequences for [the appellant], beyond jurisdiction. (*Id.* at pp. 762–763.) The dissenting opinion found this case falls within *Drake M.*'s third and arguably second category. This reasoning is compelling.

The first consequence is that by dismissing the appeal as moot due to the termination of jurisdiction, the aggrieved party then becomes bound by an adverse decision without the opportunity for review. The less sufficient the evidence, the more likely that jurisdiction will be terminated and thus increasing the likelihood that cases with insufficient evidence will be insulated from appellate review. Thus, leaving those wrongly labeled to be

a child abuser by the juvenile court without the option of challenging erroneous findings.

Further the prejudicial issue of "being labeled a child abuser" should be considered on review to ensure uniformity of the decision. The stigma of a sustained child abuse finding as a defense to mootness has been recognized when the sustained allegations pertain to sexual abuse. (See *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1752 ["Few crimes carry as much ... social opprobrium as child molestation"].) In those circumstances, courts have recognized that the collateral consequences could be significant. (See *In re Quentin H.* (2014) 230 Cal.App.4th 608, 613.) By statute and by law, there is no basis to allow erroneous findings under section 300, subdivision (b) to evade appellate review because of a social perception findings under section 300, subdivision (d) constitute a "greater" or more "recognized" stigma. The result of such an approach is a subjective weighing of the stigma attached to the sustained jurisdictional findings when addressing a claim of mootness due to the termination of dependency jurisdiction during the pendency of an appeal.

This result is neither uniform nor just as it still permits challenges to sufficiency of the evidence to evade review merely because of the type of abuse alleged in the underlying proceedings. Unless discretion to resolve the jurisdictional appeal is exercised, the juvenile court and DCFS remain permitted to pursue jurisdiction in other cases where there are

only vague and unproven concerns of "possible" conduct by the parents.

Moreover, failure to address father's appeal ignores the right of an aggrieved party to clear his name. (See *In re Justin O.* (2020) 45 Cal.App.5th 1006.) In *Justin O.* the appellant grandmother was denied the opportunity to clear her name as to physical abuse allegations sustained against her. The appellate court declined to find the matter was moot even though she no longer sought custody of the child. The reasoning was in part because the fact that evidence in support of the jurisdictional findings "was far from compelling" supported the conclusion that the juvenile court's errors were not moot. (*Id.* at p. 1018.)

In this case, as in *Justin O.*, it is uncontroverted by Respondent and the juvenile court that the evidence supporting jurisdiction was also "far from compelling." Under such circumstances, the needs of justice compel granting review.

III.
Does The Parent's Exemplary Cooperation With Authorities Causing County Counsel's Letter of Non opposition To Reversal Compel Consideration Of The Appeal On Its Merits?

In lieu of a Respondent's Brief, county counsel submitted a letter of non-opposition to reversal to the Court of Appeal and then months later argued the appeal was actually moot. Respondent's abrupt change was aptly described in the

dissenting opinion as "an about-face that would make any staff sergeant proud." (Dissenting Opinion, at p.1.) County Counsel's letter of non-opposition in essence removed the basis for the judgement from which the appeal was taken. Since the basis for the judgement disappeared, the appeal should not have been affirmed.

Under such circumstances the appropriate remedy was for the appellate court to reverse the judgment for the purpose of remanding the case to the juvenile court to vacate its jurisdictional findings and dismiss the petition. (*In re Rosegarten* (1947) 81 Cal.App.2d 126, 128 [Since the basis for that judgment has now disappeared, we should dispose of the case, not merely of the appellate proceeding which brought it here]; See *Paul v. Milk Depots* (1964) 62 Cal.2d 129, 134; *National Ass'n of Wine Bottlers v. Paul* (1969) 268 Cal.App.2d 741, 747–748; *United States v. Munsingwear, Inc.* (1950) 340 U.S. 36, 39, fn. 2, 71 S.Ct. 104, 95 L.Ed. 36.) Such a reversal avoids affirmance of an erroneous judgment. The appellate court will not dismiss an appeal as being moot if the judgment of the trial court was erroneous. (*Paul v. Milk Depots*, *supra,* 62 Cal.2d at p. 134 [judgment reversed for purpose of restoring the matter to the jurisdiction of the superior court, with directions to the court to dismiss the proceeding].)

Thus, the correct and just practice when the proceedings have become moot and the judgment upon which they were based has disappeared, is to reverse the judgement below and remand the case with directions to dismiss the petition. (*Brownlow v.*

Schwartz (1923) 261 U.S. 216, 218, 43 S.Ct. 263, 264, 67 L.Ed. 620.) The guiding principle in the treatment of a moot case is to dispose of the case in the manner "most consonant to justice in view of the character and conditions which have caused the case to become moot." (*United States v. Hamburg-Amerikanische Packet-Fahrt-Actien Gesellschaft* (1916) 239 U.S. 466, at pp. 477-478, 36 S.Ct. 212, 60 L.Ed. 387 [remanding a moot case for dismissal because "the ends of justice exact that the judgment below should not be permitted to stand when without any fault of the petitioner there is no power to review it upon the merits"].)

In this case, the matter became moot because dependency jurisdiction was terminated for the reasons in county counsel's letter of non-opposition to reversal, namely the parents' cooperation with DCFS and the juvenile court. Thus, the basis of the case becoming moot is at odds with affirmance of a judgment that DCFS no longer cares to impose. Affirmance under these circumstances is not the path "most consonant" to justice. Proper disposition of the case does not permit the judgement of the juvenile court to stand and this petition should be granted in order to afford appellant the appropriate and just relief sought in his appeal.

Conclusion

Since the right of appeal is remedial in character, the law favors hearings on the merits when such can be accomplished without doing violence to applicable rules. Accordingly in

doubtful cases the right to appeal should be granted.(*Life v. County of Los Angeles* (1990) 218 Cal.App.3d 1287, 1298; *Lee v. Brown* (1976) 18 Cal.3d 110, 113.) For the reasons stated, the petition for review should be granted.

Date: March 4, 2021

Respectfully submitted,

Megan Turkat Schirn

Megan Turkat Schirn
CA State Bar No. 169044
Attorney for Appellant, T.P.

Certificate of Compliance

Counsel of record hereby certifies, pursuant to rule 8.360, the enclosed brief has been produced using 13-point Century Schoolbook. Including footnotes and contains 45 pages and 7,214 words (excluding the Appendix: attached opinion), a total below the allotted 8,400 words for computer generated briefs under the rule. Counsel relies on the word count feature of the computer program used to prepare this brief.

Date: March 4, 2021

Respectfully submitted,

Megan Turkat Schirn

Megan Turkat Schirn
Attorney for Appellant, T.P.

Megan Turkat-Schirn, Esq.
State Bar No. 169044
269 S. Beverly Dr., #193
Beverly Hills, CA 90212
(310) 279-0003
Attorney for appellant T.P.

In Re: *B.P.*
Appeal No. B301135
Juv. Case No. 19CCJP00973

DECLARATION OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California: I am a resident of the County of Los Angeles, California, over the age of 18 years, not a party to the within action, and I served the foregoing by ***True-filing*** to:

2nd Appellate District, Division Five
300 S. Spring Street, North Tower
Los Angeles, CA 90013

And addressed as follows:

COUNTY COUNSEL: Office of County Counsel, 201 Centre Plaza Dr., Ste. 1, Monterey Park, CA 91754, *appellate @counsel.lacounty.gov*

CALIFORNIA APPELLATE PROJECT: 520 S. Grand Ave., 4th Floor, Los Angeles, CA 90071, and *capdocs@lacap.com*

MINORS COUNSEL: Springsong Cooper, Esq., CLC 3
101 Centre Plaza Dr., Monterey Park, CA 91754, *coopers@clc-la.org*

MOTHER'S COUNSEL: Landon Villavaso, Esq.,
7700 Irvine Center Drive, Suite #800, Irvine, CA 92618

FATHER'S TRIAL COUNSEL: Sesilya Saraydarian, Esq., LADL2,
901 Corporate Center Dr., Ste. #406, Monterey Park, CA 91754,
saraydarians@ladlinc.org

SUPERIOR COURT: Ed Edelman's Children's Court,
201 Centre Plaza Dr., Suite 7, Monterey Park, CA 91754

APPELLANT: T.P. * (Address on file)

Executed on March 4, 2021 at Los Angeles California: Megan Turkat Schirn
Megan Turkat Schirn

APPENDIX

(Copy of Opinion dated February 10, 2020)

Filed 2/10/21 In re D.P. CA2/5
NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

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 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

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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.

[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.

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 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

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

[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.

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—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

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[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 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."

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 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

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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.

[generally, an appellate court will exercise its discretion to reach the merits of a challenge to any jurisdiction finding if that finding "'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

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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

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]

IV. DISPOSITION

The appeals are dismissed as moot.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

KIM, J.

I concur:

BAKER, J.

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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.

***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 non-opposition 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.[12] This conflict, of course, does not establish 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

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[12] 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

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"].)

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 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.)[13] 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

[13] "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.

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 3/15/2021 by M. Alfaro, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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Lower Court Case Number:

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turkat schirn, megan (169044)
Last Name, First Name (PNum)

Megan Turkat Schirn
Law Firm