Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically RECEIVED on 5/17/2021 at 4:50:03 PM

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 5/17/2021 by M. Chang, Deputy Clerk

S267429

IN THE
SUPREME COURT OF CALIFORNIA

In re D.P.,
A Person Coming Under the Juvenile Court Law.

THE LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

TWAIN P.,

Defendant and Appellant.

After a Decision by the Court of Appeal
Second Appellate District, Division Five, Case No. B301135
Los Angeles Superior Court Case No. 19CCJP00973B

ANSWER TO PETITION FOR REVIEW BY THE LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES

OFFICE OF THE COUNTY COUNSEL
RODRIGO A. CASTRO-SILVA
County Counsel
KIM NEMOY
Assistant County Counsel
WILLIAM D. THETFORD, SBN 133022
Principal Deputy County Counsel
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012
Telephone: (213) 580-2978 Facsimile: (213) 613-4904
Email: wthetford@counsel.lacounty.gov
Attorneys for Respondent
THE LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Table Of Contents

Page

Table Of Authorities 3

Introduction 5

Background 6

Argument 7

I. The Petition Does Not Present A Legal Ground For Review Pursuant To Rule 8.500(b). 7

A. Appellant's Statement Of Necessity For Review Is A Misstatement Of The Opinion. 8

B. Arguments In The Petition Derived From The Dissent Were Not Raised By Appellant Below. 9

C. Because The Court Of Appeal Did Not Decide The Merits Of Appellant's Appeal, There Is No Decision On The Merits For This Court To Review. 11

D. Appellant's Challenge To The Sufficiency Of The Evidence Based On Comments Made By The Juvenile Is Not Cognizable. 11

E. Appellant's Successful Completion Of A Section 360, Subdivision (b) Disposition Is Not A Legal Ground For Review. 15

F. Respondent's Letter Of Non-Opposition Is Not A Legal Ground For Review Under Rule 8.500 (b). 16

II. The Appeal Was Rendered Moot. 17

Conclusion 22

Certificate Of Word Count Pursuant To Rule 8.360 23

Declaration Of Service 24

Table Of Authorities

Page

CASES

Davey v. Southern Pacific Co. (1897) 116 Cal. 325 13

De Cou v. Howell (1923) 190 Cal. 741 13

Howard v. Thrifty Drug & Discount Stores (1995) 10 Cal.4th 424 13

In re Drake M. (2012) 211 Cal.App.4th 754 17

In re Esperanza C. (2008) 165 Cal.App.4th 1042 17

In re I.A. (2011) 201 Cal.App.4th 1484 .... 17, 19

In re Jonathan B. (1992) 5 Cal.App.4th 873 13

In re Marriage of Arceneaux (1990) 51 Cal.3d 1130 20

In re N.S. (2016) 245 Cal.App.4th 59 16

Leone v. Medical Board of Cal. (2000) 22 Cal.4th 660 9

People v. Stanley (1995) 10 Cal.4th 764 20

People v. Vera (1997) 15 Cal.4th 269 13

State Farm Fire & Casualty Co. v. Pietak (2001) 90 Cal.App.4th 600 20

Taormino v. Denny (1970) 1 Cal.3d 679 14

STATUTES

Penal Code, section 11165.12 .... 19, 21

Penal Code, section 11165.2 20

Penal Code, section 11165.6 20

WELFARE AND INSTITUTIONS CODE

Section 361.3 10

Table Of Authorities (Continued)

Page

RULES

California Rules of Court, rule 8.220 (a)(2) 16

California Rules of Court, rule 8.500 (a)(1) 9, 11

California Rules of Court, rule 8.500 (b)(1) 8, 9

California Rules of Court, rule 8.500 (c)(1) 10, 11

California Rules of Court, rule 8.500 (c)(2) 11

CONSTITUTIONAL PROVISIONS

Cal. Const. Art. VI, § 3.. 11

Cal. Const. Art. VI, § 12.. 9, 11

S267429

IN THE
SUPREME COURT OF CALIFORNIA

In re B. P.,
A Person Coming Under the Juvenile Court Law.

THE LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

TWAIN P.,

Defendant and Appellant.

ANSWER TO PETITION FOR REVIEW BY THE LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Introduction

Appellant-Petitioner, Twain P. (Appellant), is the father of seven-year-old B.P. Appellant has petitioned this Court for review of the nonpublished opinion from Division Five of the Second Appellate District (B301135), issued on February 10, 2021, (Opinion). Appellant's appeal challenged the juvenile court's September 20, 2019 jurisdictional finding that his neglectful conduct caused B.P. to suffer a rib fracture and the juvenile court's disposition order for a Welfare and Institutions

Code[1] section 360, subdivision (b) disposition.[2] (AOB, generally.) The majority of the panel below (Majority) found that the termination of juvenile court jurisdiction prevented the Court from granting any effective relief and dismissed Appellant's appeal as moot. (Opinion, at pp. 5-9.) Justice Rubin disagreed with the Majority and issued a Dissenting Opinion (Dissent). Appellant conceded that the disposition order for informal supervision was rendered moot, but seeks review of the merits of the appeal and the dismissal.

The Petition For Review (Petition) should be denied because it fails to establish a legal ground for review, it asserts grounds that Appellant did not raise in the Court of Appeal, it asserts the Dissent as having precedential value, it requests that the Supreme Court address the merits of the appeal even though the Court of Appeal declined to address the merits, and the Court of Appeal's decision to dismiss the appeal as moot was correct.

Background

For purposes of this Answer to the Petition (Answer), Respondent adopts the statement of facts in the Opinion. (Petition, Exhibit A.) However, for clarification, Respondent

---

[1] All statutory references shall be to this code unless otherwise indicated.

[2] Section 360, subdivision (b) provides as follows: If the court finds that the child is a person described by Section 300, it may, without adjudicating the child a dependent child of the court, order that services be provided to keep the family together and place the child and the child's parent or guardian under the supervision of the social worker for a time period consistent with Section 301.

notes that the sustained count, as recited in the Opinion, is incomplete. The sustained language included the following preface language: "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 legal guardian to supervise or protect the child adequately[, and] as a result of the willful or negligent failure of the child's parent or legal guardian to supervise or protect the child adequately from the conduct of the custodian with whom the child has been left." (Clerk's Transcript 5.)

Argument

I. The Petition Does Not Present A Legal Ground For Review Pursuant To Rule 8.500(b).[3]

Rule 8.500(b) delineates the grounds for review:

> (1) When necessary to secure uniformity of decision or to settle an important question of law;
>
> (2) When the Court of Appeal lacked jurisdiction;
>
> (3) When the Court of Appeal decision lacked the concurrence of sufficient qualified justices; or
>
> (4) For the purpose of transferring the matter to the Court of Appeal for such proceedings as the Supreme Court may order.

The petition identifies four issues Appellant is asking this Court address:

> 1. Did the juvenile court's verbal statements that preceded and explained its ruling establish that there was no substantial evidence supporting its ruling?

[3] All references to rules of court shall be to the California Rules of Court.

2. Does a parent's appeal from a juvenile court's jurisdictional finding evade the mootness doctrine because the finding labels the parent a child abuser?

3. Does a parent's successful completion of a section 360, subdivision (b) disposition for informal supervision prevent the Court of Appeal from dismissing as moot the parent's appeal from the jurisdictional finding upon which the order for informal supervision was based?

4. Does a respondent's letter of non-opposition that, without conceding error, states respondent does not oppose appellate reversal of the challenged jurisdictional finding prevent a Court of Appeal from dismissing the appeal as moot?

A. Appellant's Statement Of Necessity For Review Is A Misstatement Of The Opinion.

Appellant contends this Court should review the Opinion because: "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. (Cal. Rules of CT, rule 8.500 (b)(1).)" (Petition, at p. 3.) This misstates what the Majority did below.

The Majority did not address the merits of Appellant's appeal. Rather, it found that the termination of juvenile court jurisdiction while the appeal was pending prevented the Court from granting Appellant any effective relief, and ordered the appeal dismissed as moot. (Opinion, at pp. 5-8.)

"The Supreme Court may review the *decision* of a court of appeal in any cause." (Cal. Const. Art. VI, § 12(b), italics added; Rule 8.500 (a)(1) [accord]; see also *Leone v. Medical Board of Cal.* (2000) 22 Cal.4th 660, 666-667.) Because the Court of Appeal did not decide Appellant's appeal on the merits, there is no decision on the merits for this Court to review. Furthermore, Appellant has failed to identify any lack of uniformity of any "decisions in lower courts." (Petition, at p. 3; rule 8.500 (b)(1).)

Therefore, Appellant's Statement of Necessity provides no reason, much less, a legal ground for review. For this reason the Petition should be denied.

B. Arguments In The Petition Derived From The Dissent Were Not Raised By Appellant Below.

Rule 8.500 (c)(1) provides that, "As a policy matter, on petition for review the Supreme Court normally will not consider an issue that the petitioner failed to timely raise in the Court of Appeal." Rule 8.500 (c)(1) provides that, "A party may petition for review without petitioning for rehearing in the Court of Appeal, but as a policy matter the Supreme Court normally will accept the Court of Appeal opinion's statement of the issues and facts unless the party has called the Court of Appeal's attention to any alleged omission or misstatement of an issue or fact in a petition for rehearing."

In Appellant's Letter Brief (ALB) filed in response to the Court of Appeal's request for briefing on the issue of mootness, Appellant argued that the appeal is not moot because "the sustained findings against Appellant impact his good moral character and establish a history of being responsible for acts of

child abuse or neglect. (§ 361.3, subd. (a)(5).) This would impact his ability to ever be a resource family for family members. Dismissing his appeal for mootness deprives appellate of a chance to challenge this stigma on his character." (ALB, at p. 4.) This is the specific issue addressed by the Majority. (Opinion, at pp. 5-6.) The Majority dismissed the argument by stating, "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."

However, the Petition rephrases the argument by stating the appeal was not rendered moot because the sustained allegations labeled Appellant as a "child abuser," an even less specific legal or practical consequence. (Petition, at pp. 22-23.) This argument was taken from the Dissent. (Petition, at pp. 22-23; Dissent, at pp. 6-7.) Therefore, the Majority did not address the issue as phrased in this manner. Appellant should not be allowed to rephrase his argument regarding mootness for the purposes of the Petition by adopting the reasoning of the Dissent. (Rule 8.500 (c)(1).

Appellant also argues for the first time in the Petition that "Exemplary Cooperation With Authorities Causing County Counsel's Letter of Non Opposition To Reversal Compel Consideration Of The Appeal On Its Merits." (AOB, generally; Petition, at pp. 25-27.) This, in part, is also taken from the Dissent and cannot be considered a legal ground for review (Dissent, at p. 1), because the Majority did not address these

issues. (Opinion, at pp. 5-9.) Appellant should not be allowed to raise them for the first time in the Petition. (Rule 8.500 (c)(1).)

Appellant should have filed a Petition for Rehearing had he wanted to include in a petition for review the issues raised by the Dissent. Because he did not do so, the issues and facts for purposes of any review should be limited to those addressed in the Majority's Opinion. (Rule 8.500 (c)(2).)

C. Because The Court Of Appeal Did Not Decide The Merits Of Appellant's Appeal, There Is No Decision On The Merits For This Court To Review.

Appellant begins the Argument Section of the Petition by asking this Court to decide whether juvenile court jurisdictional findings under Section 300, subdivision (b) can be supported by a juvenile court's finding there was at most a possible neglectful act by the parents. (Petition, at p. 20.) This is the argument Appellant presented to the Court of Appeal. (AOB 21-35.)

However, as noted above, the Court of Appeal did not decide the merits of the appeal. (Opinion, at pp. 5-8.) Therefore, there is no decision on the merits for this Court to review. (Cal. Const. Art. VI, §§ 3, 12(b); Rule 8.500 (a)(1).)

D. Appellant's Challenge To The Sufficiency Of The Evidence Based On Comments Made By The Juvenile Is Not Cognizable.

As argued above, because the Majority did not decide the merits of the appeal, there is no substantive decision of the Court of Appeal for this Court to review. However, assuming there were, Appellant's challenge in the Petition to the sufficiency of the evidence is improperly based on the juvenile court's verbal

explanation of the reasons for its ruling, not on an analysis of the evidence. (Petition, at pp. 20-22.) Appellant notes:

> 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.)

(Petition for Review, at p. 20.)

Likewise, to show the evidence was insufficient, the Dissent focused on Judge Barns' verbal explanation for his ruling:

> 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."

(Dissent, at p. 3.)

However, "[I]t is judicial action, and not judicial reasoning or argument, which is the subject of review; and, if the former be

correct, we are not concerned with the faults of the latter." (*Davey v. Southern Pacific Co.* (1897) 116 Cal. 325, 330; accord, *People v. Vera* (1997) 15 Cal.4th 269, 272; accord, *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 876.) "We uphold judgments if they are correct for any reason, regardless of the correctness of the grounds upon which the court reached its conclusion." (*Howard v. Thrifty Drug & Discount Stores* (1995) 10 Cal.4th 424, 443 [internal quotation marks and citations omitted.) "The law is definitely settled in this state by a long line of decisions that the opinion of the trial court is not a part of the record and cannot be considered by an appellate court as indicating what operated upon its mind in coming to a conclusion as to the ultimate facts of the case. It has been directly held that the opinion, though printed in the transcript, is no part of the record on appeal and cannot be considered by the court in any manner or for any purpose. [. . .] To hold that oral or written opinions or expressions of judges of trial courts may be resorted to overturn judgments would be to open the door to mischievous and vexatious practices. Neither a juror nor a judge is permitted to impeach his verdict or judgment." (*De Cou v. Howell* (1923) 190 Cal. 741, 751.)

Therefore, as the juvenile court sustained the dependency petition under section 300, subdivision (b)(1), the judgment of the juvenile court was as follows:

> 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 legal guardian to supervise or protect the child adequately[, and] as a result of the willful or

> negligent failure of the child's parent or legal guardian to supervise or protect the child adequately from the conduct of the custodian with whom the child has been left.
>
> 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.

Judge Barns' explanation for his ruling, his use of the words "possible" and "perhaps," and the striking of the words "deliberate" and "unreasonable" cannot be used to reverse the judgment. (RT 120-121.)[4] "No antecedent expression of the judge, whether casual or cast in the form of an opinion, can in any way restrict his absolute power to declare his final conclusion. . . ." (*Taormino v. Denny* (1970) 1 Cal.3d 679, 684 [internal quotation marks and citations omitted].)

Additionally, because the count was sustained under section 300, subdivision (b)(1), the words "deliberate" and

---

[4] "RT" refers to the one reporter's transcript filed below.

"unreasonable" were not necessary for juvenile court jurisdiction and, therefore, their absence is not relevant to whether substantial evidence supported the sustained count.

Furthermore, the Dissent acknowledged that the conflict between the experts' testimony, did not establish that the evidence was legally insufficient. (Dissent, at pp. 2-3.) Because Judge Barns' antecedent comments cannot be used to impeach the judgment, and the Dissent acknowledges the evidence was not legally insufficient, Appellant's challenge based on the juvenile court's comments about its ruling is not cognizable.

E. Appellant's Successful Completion Of A Section 360, Subdivision (b) Disposition Is Not A Legal Ground For Review.

As argued above, this issue was not raised with the Court of Appeal. Respondent does not waive that argument. Regardless, there is no merit to the argument. The Petition argues that Appellant's exemplary cooperation with Respondent compelled the Court of Appeal to consider the appeal on the merits. (Petition, at pp. 25-27.) This is not a legal ground for review under rule 8.500 (b). Furthermore, there is no legal support for the argument. As discussed above, the only decision of the Court of Appeal was the dismissal of the appeal as moot. (Opinion, at pp. 5-8.) To have any relevance to that issue, Appellant's argument must be that the successful completion of a section 360, subdivision (b) disposition, prevents a Court of Appeal from finding that the termination of juvenile court jurisdiction renders moot an appeal from the jurisdictional findings. Appellant provides no legal authority for this

conclusion. (Petition, at pp. 25-27.) Indeed, it was Appellant's successful completion of informal supervision that led to the termination of juvenile court jurisdiction, rendering the appeal from the underlying jurisdictional findings moot. (See, e.g., *In re N.S.* (2016) 245 Cal.App.4th 59-60.)

F. Respondent's Letter Of Non-Opposition Is Not A Legal Ground For Review Under Rule 8.500 (b).

Following the Dissent's lead, Appellant appears to argue that Respondent's Non-Opposition Letter precluded Respondent from briefing the issue of mootness when asked to do so by the Court of Appeal and precluded the Court of Appeal from dismissing the appeal as moot. (Dissent, at p. 1; Petition, at p. 25-27.)

Initially, it should be noted that Respondent did not concede error. (Non-Opposition Letter [NOL], at p. 4.) However, even if it had, it would not have been binding on the Court of Appeal. When a respondent fails to file a respondent's brief, the Court of Appeal "may decide the appeal on the record, the opening brief, and any oral argument by the appellant." (Rule 8.220 (a)(2).)

Appellant's argument in this regard is premised on the assumption that the juvenile court erred by sustaining count b-1. (Petition, at pp. 25-27.) However, this is incongruent with the doctrine of mootness, which requires dismissal of the appeal, not reversal of the trial court's judgment. "An appellate court will not review questions which are moot and only of academic importance, nor will it determine abstract questions of law at the request of a party who shows no substantial rights can be

affected by the decision either way. [Citation.] 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. [Citations.] On a case-by-case basis, the reviewing court decides whether subsequent events in a dependency case have rendered the appeal moot and whether its decision would affect the outcome of the case in a subsequent proceeding. [Citation.]" (*In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054-1055.)

For this reason as well, the Petition For Review should be denied.

II. The Appeal Was Rendered Moot.

As argued above, Appellant has inappropriately rephrased his mootness argument for the purposes of conforming the Petition to the Dissent's position. Respondent does not waive that argument. However, the Majority was correct on the issue.

Appellant and the Dissent disagree with the Majority's opinion that the appeal was rendered moot. (Petition, at pp. 22-25; Dissent, at p. 5-7.) They both rely on *In re Drake M.* (2012) 211 Cal.App.4th 754 (*Drake M.*) to support their positions. (Petition, at p. 23; Dissent, at p. 5.) Although, the *Drake M.* Court stated it appeared the respondent-agency was contending the appeal was moot, the case actually addressed the issue of a lack of a justiciable controversy. (*Drake M., supra,* 211 Cal.App.4th at pp. 762-763; see, e.g., *In re I.A.* (2011) 201 Cal.App.4th 1484, 1489.) As the Dissent recognized, "mootness" and "justiciable controversy" are not synonymous. (Dissent, at p. 5, fn. 2.) However, the Majority and the Dissent acknowledge

that the issue is whether the appellate court can provide any effective relief if it finds reversible error. (Opinion, at p. 6; Dissent, at p. 5, fn. 2.) Citing *In re I.A.* (2011) 201 Cal.App.4th 1484, 1493, the Majority found that to escape dismissal for mootness a party must demonstrate the specific legal or practical negative consequences that will result from the jurisdictional findings the party seeks to reverse. (Opinion, at p. 6.)

In his letter brief addressing mootness, Appellant argued the specific harm that will result is that the jurisdictional finding would impact his ability to ever be a resource family for family members. (Letter Brief, at p. 4.) The Majority found this concern speculative because Appellant did not claim to have any "relatives that might be subject to a placement under section 361.3, and thus [has] failed to identify a specific legal or practical negative consequence resulting from the jurisdictional finding." (Opinion, at p. 7.) In the Petition, Appellant's claim of harm is the stigma of being labeled a child abuser; an even less specific negative consequence. (Petition, at p. 24.) The Dissent concurs that this is sufficient alone to avoid dismissal. (Dissent, at p. 7.) However, neither Appellant nor the Dissent cite to any legal authority directly supporting this position. Indeed, if being labeled a child abuser is all that is required to prevent a finding of mootness, no juvenile dependency case could ever be rendered moot. As the Majority noted, to avoid dismissal for mootness, the party "must demonstrate the specific legal or practical negative consequences that will result from the jurisdictional findings they seek to reverse." (Opinion, at p. 6.) Merely, stating the surviving

jurisdictional count labels Appellant a child abuser without showing a specific legal or practical negative consequence of being so labeled, raises only "the specter of a future impact," which is insufficient to avoid dismissal. (*In re I.A., supra*, 201 Cal.App.4th at p. 1494.)

In the ALB, Appellant also argued against mootness because a substantiated claim of child abuse results in his name appearing in the Child Abuse Central Index (CACI). (ALB, at pp. 4-6.) Appellant does not advance this argument in the Petition (Petition, generally), and thus it does not provide a reason or ground for review.

The Dissent raises the CACI. (Dissent, pp. 6-7.) However, the Majority appropriately dismissed the argument by noting that, "A report is substantiated and [Respondent'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).) Thus, the Department's reporting duty is not dependent on a juvenile court sustaining a section 300 petition." (Opinion, at pp. 7-8.) The Majority also noted that the Department's reporting duty is only triggered when the substantiated child abuse or neglect consists of "physical injury or death inflicted by other than accidental means upon a child by another person[,] 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[,] or 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." (Opinion, at p. 8, fn. 8; see Pen. Code §§ 11165.2 and 11165.6.)

The Majority further noted that, "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." (Opinion, at p. 8, fn. 9.) Because the order of the lower court is presumed to be correct on appeal, it was the Appellant's burden to demonstrate error, Appellant's failure to demonstrate a CACI referral was made, forfeited the issue. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; *People v. Stanley* (1995) 10 Cal.4th 764, 793; *State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610.)

The Dissent notes that if the juvenile court's finding of neglect is affirmed then, pursuant to Penal Code section 11169, subdivisions (d) and (e), Appellant loses his right to challenge his inclusion on the CACI. (Dissent, at p. 7-8.) However, this is not necessarily accurate. As the Majority noted, the type of child abuse that triggers a reporting requirement is limited to the type of abuse described above. (Opinion, at pp. 4-5, fn. 6.) Additionally, a substantiated report cannot be based on an accidental injury, but must be based on child abuse or neglect as defined in section 11165.6 of the Penal Code. (Pen. Code,

§ 11165.12(b).) The sustained allegations in the instant manner were limited to an accidental injury based on neglect and do not describe child abuse, as defined by Penal Code section 11165.6. (Opinion, at pp. 4-5, fn. 6.) Therefore, the sustained allegations should not prevent Appellant from challenging a CACI report describing the type of child abuse required for reporting, if in fact one was made. However, as the Majority recognized, Appellant made no showing that he was placed on the CACI, which was part of the reason the Majority determined his appeal was rendered moot when juvenile court jurisdiction terminated. (Opinion, at p. 8, fn. 9.) Furthermore, Appellant made no showing below or in the Petition that, in fact, the sustained allegations prevented him from challenging a CACI report, again, if one were made. (ALR, generally; Petition, generally.)

///

///

///

///

Conclusion

Appellant has not demonstrated grounds for this Court to review the decision of the Court of Appeal. The petition should therefore be denied.

DATED: May 17, 2021

Respectfully submitted,

RODRIGO A. CASTRO-SILVA
County Counsel

By /s/ William D. Thetford
William D. Thetford
Principal Deputy County Counsel

Attorneys for Respondent

Certificate Of Word Count Pursuant To Rule 8.360

The text of this brief consists of 4,210 words as counted by the Microsoft Office Word 2016 program used to generate this brief.

DATED: May 17, 2021

Respectfully submitted,

RODRIGO A. CASTRO-SILVA
County Counsel

By /s/ William Thetford
WILLIAM D. THETFORD
Principal Deputy County Counsel

Attorneys for Respondent

Declaration Of Service

STATE OF CALIFORNIA, County of Los Angeles:

ARLENE MEZA states: I am employed in the County of Los Angeles, State of California, over the age of eighteen years and not a party to the within action. My business address is 648 Kenneth Hahn Hall of Administration, 500 West Temple Street, Los Angeles, California 90012.

On May 17, 2021, I served the attached **ANSWER TO PETITION FOR REVIEW BY THE LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES IN THE MATTER OF D.P., SUPREME COURT CASE NO. S267429, 2d JUVENILE NO. B301135, LASC NO. 19CCJP00973B,** to the persons and/or representative of the court as addressed below.

BY TRUEFILING. I served via TrueFiling, and no error was reported, a copy of the document(s) identified above:

Landon Villavaso, Esq.
landon@lvlaw.org
office@lvlaw.info
(Counsel for Appellant Mother)

Megan Turkat-Schirn, Esq.
schirn@sbcglobal.net
(Counsel for Appellant Father)

Springsong Cooper, Esq.
Petra Alexander, Esq.
Children's Law Center 3
coopers@clcla.org
appeals3@clcla.org
(Trial Counsel for Minors)

Honorable Craig S. Barnes
Dept. 405
c/o Clerk of the Superior Court
Edelman Children's Court
JuvJOAppeals@lacourt.org

California Appellate Project
capdocs@lacap.com

Court of Appeal
[Service through TrueFiling]

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 17, 2021, at Los Angeles, California.

/s/ Arlene Meza
ARLENE MEZA

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 5/17/2021 by M. Chang, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **IN RE D.P.**
Case Number: **S267429**
Lower Court Case Number: **B301135**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **wthetford@counsel.lacounty.gov**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
ANSWER TO PETITION FOR REVIEW (FEE PREVIOUSLY PAID)	S267429_APR_DCFS

Service Recipients:

Person Served	Email Address	Type	Date / Time
Landon Villavaso Law Office of Landon C. Villavaso 213753	landon@lvlaw.org	e-Serve	5/17/2021 4:50:02 PM
John Kim Children's Law Center, Unit 3 298957	appeals3@clcla.org	e-Serve	5/17/2021 4:50:02 PM
Megan Turkat-Schirn Court Added 169044	schirn@sbcglobal.net	e-Serve	5/17/2021 4:50:02 PM
Landon Villavaso Attorney at Law	office@lvlaw.info	e-Serve	5/17/2021 4:50:02 PM
William Thetford Office of the County Counsel 133022	wthetford@counsel.lacounty.gov	e-Serve	5/17/2021 4:50:02 PM
Honorable Craig S. Barnes	JuvJoAppeals@lacourt.org	e-Serve	5/17/2021 4:50:02 PM
Springsong Cooper	coopers@clcla.org	e-Serve	5/17/2021 4:50:02 PM
California Appellate Project	capdocs@lacap.com	e-Serve	5/17/2021 4:50:02 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

5/17/2021
Date

/s/Arlene Meza

Signature

Thetford, William (133022)

Last Name, First Name (PNum)

Los Angeles County Counsel Appellate group

Law Firm