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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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

B284091
(Los Angeles County
Super. Ct. No. CK72865)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JULIET B.

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Kristen Byrdsong, Commissioner. Affirmed
in part and reversed in part.

Emery El Habiby, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

Juliet B. (mother) appeals from jurisdictional findings and dispositional orders concerning her daughters N.B., C.B., and L.B. At the time of the orders, N.B. was 10, C.B. was seven, and L.B. was six years old. The children were in the physical custody of their father, mother's ex-husband, when the Los Angeles Police Department (LAPD) confiscated from his home four zip guns, which father had built in the garage, and four rifles. Finding that the father put the children in danger by constructing firearms where they reside, and that father and his girlfriend exposed the children to domestic violence, the Department of Child and Family Services (DCFS) detained the children and placed them with an older half-sister.

After investigating mother for possible placement with a non-custodial parent, DCFS uncovered information indicating that mother could not care for the children, and alleged against mother one count of failure to protect pursuant to Welfare and Institutions Code¹ section 300, subdivision (b)(1), one count of emotional abuse pursuant to section 300, subdivision (b)(1), and one count of emotional abuse pursuant to section 300, subdivision (c). The dependency court found all allegations against mother and father true, assumed jurisdiction over the

¹ All further statutory references are to the Welfare and Institutions Code.

children, removed the children from both parents' physical custody, and ordered monitored visits between mother and the children.

We reverse the jurisdictional finding of emotional abuse under section 300, subdivision (b)(1). We affirm the trial court's remaining findings and orders.

BACKGROUND

I. Events leading to the dependency petition

On September 17, 2016, a detective from the LAPD notified the Department of Children and Family Services (DCFS) that father was being investigated for making pipe bombs and firearms in his garage, and that there were children in the home. After executing a search warrant and discovering four zip guns and four rifles inside the garage and one of the bedrooms, father was charged with possession of a zip gun.

A DCFS social worker visited the home, where father resided with his girlfriend, her two children, and his three children with mother: N.B., C.B., and L.B. Father explained to the social worker that he made the guns for protection because mother had put a "hit" on him. Father stated that a man named S.B. informed him that mother asked S.B. to kill father. The social worker spoke with an LAPD detective who confirmed that S.B. had reported that mother asked him to kill father, but that the allegation was not credible. According to the detective, S.B. abused methamphetamine and his "whole goal" was to get out of a court-ordered drug rehabilitation facility. According to the detective, S.B. had already attempted to employ a similar tactic by offering his cooperation in hope of making a "deal."² Mother

² The record is silent as to the nature of this "similar tactic."

denied ever soliciting S.B. to kill father. Father also reported that mother had tried to poison him by planting oxycodone pills in his food, causing him to have bloody stools for days. Father showed the social worker a package of “tiny multi-colored pills” which father alleged mother had placed in his food. According to father, he reported the incident to the police but they “ ‘aren’t doing anything about it.’ ” Father also stated mother would give the children Nyquil to make them relax. Father admitted he had been arrested twice for domestic violence over the course of his relationship with mother but stated that both cases were dismissed because mother lied.

Over the course of DCFS’s initial investigation, N.B. told the social worker assigned to the case that she felt “ ‘a little scared’ ” with her mother because she “lives in a hotel and there are bad people there.”³ N.B. stated mother would get mad at father and call him names; she also stated father had told her that mother tried to poison him. She disclosed that mother “acts crazy” when she gets tired and “ ‘doesn’t have a lot of food.’ ”

C.B. told the social worker that she feels “ ‘[n]ot really safe’ ” when she’s with mother because she is worried about being “ ‘kidnapped by strangers.’ ” When asked if she eats when she is with mother, C.B. replied, “ ‘[w]e make our own food.’ ”

L.B. told the social worker that mother “ ‘falls asleep all the time.’ ” When asked if she ever observed mother or father hit or yell at anyone, L.B. reported she had observed such behavior between father and his current girlfriend “ ‘a lot of times.’ ”

³ The social worker also asked the three girls about their experiences with father. As he is not a party to this appeal, we only discuss the statements by and about father that are pertinent to mother’s issues on appeal.

Father admitted he and his girlfriend have engaged in domestic violence. After interviewing N.B., C.B., and L.B., the social worker determined that the children were not safe in father's care not only because father was constructing firearms where his children reside, but also because they had witnessed incidences of domestic violence between father and his girlfriend. Father provided contact information for relatives with whom the children could be placed. After running background checks on the relatives, the social worker determined that only father's adult child, K.B., was eligible to care for the children. In a conversation with the social worker, K.B. stated that mother had tried to poison her once by putting drugs in her food. K.B. reported that after ingesting the food, she had become "very sick."

The following day, a social worker interviewed mother and her 17-year-old daughter, R.B., in their home. The apartment was clean and organized, and mother reported she was unemployed and collected food stamps. Mother reported that she had prescriptions for Xanax and Codeine, which she took for thyroid issues and fibromyalgia. She reported experiencing domestic violence at the hands of father for over 12 years. R.B. told the social worker she feels comfortable and safe with mother, and has never observed her mother abusing drugs. She denied being exposed to sexual abuse, and reported that she observed domestic violence between mother and father but that father "caused it all." R.B. was wearing clean clothes, appeared healthy, and stated mother provides her with plenty of food.

A. THE PRIOR DEPENDENCY CASES

Before this case and beginning in 1997, DCFS received 19 referrals alleging mother either abused or neglected her children

or step-children.⁴ The majority of these referrals were unfounded, inconclusive, or evaluated out;⁵ ultimately, DCFS filed a total of four petitions (including the petition in the instant case) substantiating allegations of various forms of abuse and neglect.

The first substantiated referral reflects that mother and her then-spouse emotionally abused mother's stepchild by threatening to take him away from his biological mother, refusing to allow the child to call his mother, and "tear[ing] apart the child's room to look through the child's belongings." The reporting party also stated that the child would "'cower'" behind his desk when mother would pick him up from school. Although DCFS substantiated the referral in June 2003, they ultimately closed the case without filing a petition after the family court issued a custody order granting full legal custody to the father with conditions that he attend anger management and ensure the child attend counseling.

In 2010, DCFS filed a nondetained petition alleging emotional abuse of mother's two older daughters (not parties to this appeal); general neglect of N.B., C.B., and the two older daughters; and "at-risk" of abuse with respect to N.B. and C.B. DCFS filed the petition after receiving three referrals. The first referral alleged C.B. tested positive for the barbiturate butalbital

⁴ DCFS also received numerous referrals alleging various forms of abuse by father. As father is not a party to this appeal, we do not address the substance of these allegations.

⁵ The record does not elaborate on the meaning of "evaluated out" or the procedural effect of an "evaluation out." For our analysis, however, we focus only on the referrals that DCFS substantiated.

at birth and had suffered withdrawal symptoms. The second referral alleged mother was smoking “‘crystal meth’ ” while her three daughters were in the room. The third referral arose after Mother called DCFS to report that the father of her two older daughters had contacted authorities to report that mother had abducted the two children the previous day. According to mother, the Los Angeles County District Attorney’s Abduction Unit had removed the children from her the previous day, and their father then transported them to his home. Mother further reported that the two girls had been sexually assaulted by their father.⁶ In addition, one of the children reported she and her sister were “afraid and cold all night” with their father. DCFS filed a non-detained petition and recommended family maintenance services. The record is silent as to the outcome of this case.

DCFS filed another nondetained petition in July 2014 after N.B., C.B., L.B., and mother’s two older daughters were observed running outside, shoeless and unsupervised, in an area with broken glass, nails, and needles lying on the ground. The reporting party also stated the children were “‘filthy,’ ” their hair was in knots, the toddler is often seen with “stuff coming out” of her diaper, and mother uses methamphetamine. Upon investigation, DCFS discovered that the children suffered from untreated dental issues, that N.B. had not attended school since

⁶ The record reflects that DCFS had received two referrals alleging the girls’ father sexually abused them. The first, in 2007, was unfounded. The second, in 2008, was substantiated after the girls disclosed their father fondled them at night and one of father’s adult stepdaughters disclosed that he fondled her at night as well when she was a child. DCFS filed a petition, but the court ultimately dismissed it. The record is silent as to why.

2012, and that the two older daughters (then ages 15 and 17) were not enrolled in school. The petition was subsequently taken off-calendar to allow mother to enroll the children in school and bring them to dental and medical exams. A second referral came on August 29, 2014 alleging mother had left N.B., C.B., and L.B. in the care of a nonrelative for more than one month without making any provisions for the children. N.B., C.B., and L.B. were taken into protective custody that day. On August 12, 2015, the court terminated jurisdiction over N.B., C.B., and L.B., granted father primary physical custody of the children and joint legal custody to mother and father, and granted unmonitored visits for mother. The three girls were in father's physical custody at the inception of the current case.

II. The dependency proceedings

DCFS placed the children with their older half-sister, K.B., and filed a dependency petition on September 21, 2016. The petition alleged one count of failure to protect against father in violation of section 300, subdivision (b)(1) (count b-1) and one count of failure to protect against mother in violation of section 300, subdivision (b)(1) (count b-2). With respect to mother, the petition alleged her history of substance abuse rendered her incapable of providing regular care for the children. At the detention hearing that day, the court ordered N.B., C.B., and L.B. detained. DCFS did not recommend removal of R.B. and she was not detained from mother. At the conclusion of the hearing, the court admonished all adults not to "discuss the matter with the children or discuss whether there's a better parent or not so great a parent. The point is to ensure the best interest of the children which means not having those

discussions.” Both mother and father were present at the hearing.

A. THE JURISDICTION/DISPOSITION REPORT

DCFS filed a jurisdiction/disposition report on or about November 3, 2016 and a first amended petition (FAP) on February 23, 2017. In addition to the two counts in the original dependency petition, the agency alleged in the FAP two additional counts against mother and father for emotional abuse. Under section 300, subdivision (b)(1) (count b-3), the agency alleged mother and father had a history of engaging in violent altercations in front of the children; had emotionally abused the children by “enmeshing [them] in [their] ongoing conflicts;” and had frequently made demeaning remarks about each other to the children. With respect to mother, the agency alleged she had continuously emotionally abused the children by blaming father for the problems between the parents. With respect to father, DCFS alleged he had failed to take action to protect the children from mother’s emotional abuse. The FAP also included an allegation under section 300, subdivision (c) (count c-1) that the children are suffering emotional damage as a result of the parents’ conduct, and supported this allegation with the same set of statements supporting count b-3.

The jurisdiction/disposition report also contains additional information gathered by DCFS in the months between the detention hearing and the jurisdiction/disposition hearing. The report reveals that father told L.B., in addition to N.B., that mother had attempted to poison him. “‘My mom put the little poison in my dad’s food,’” reported L.B. “‘It was a couple of years ago. My dad told me all of it.’” Shortly thereafter, L.B. said, “‘[Mother] wants all the money and us.’” L.B. also told the

investigator that mother and father were saying bad things about each other, particularly that each would say that the other lies. She also stated that she was worried about her mother being killed. “ ‘Our dad will kill her because our mom wants to kill our dad.’ ” L.B. further reported that her parents fight, and that mother “ ‘comes over and fights with us, so we just fight with her back.’ ”

In an interview with a DCFS dependency investigator, N.B. stated mother does not act any differently after taking her pills. N.B. stated she is not fearful of mother; and that mother “ ‘doesn’t really treat us that bad. She’s not that mean.’ ” N.B. also told the investigator that life with her mom was “ ‘fun . . . we’ll go to the mall . . . [and] the pumpkin patches.’ ”

C.B. told the dependency investigator that mother does not act strangely when she takes her pills, and that she feels comfortable and safe with mother.

The investigator asked L.B. if her mother acts “strange or funny” after taking her pills, to which L.B. replied, “ ‘No, she just acts a little funny. She said she doesn’t know me.’ ” L.B. disclosed that, when she and her sisters visit with mother, their older sisters take care of them. She stated that life with mother was “ ‘a little bad cuz, sometimes she’ll sit in the chair and my sisters had to cook the food.’ ” L.B. denied being fearful of mother.

Mother provided DCFS verification of her medical prescriptions for Xanax, Flexeril, and Fiorinal with codeine. She had submitted to a drug test on September 20, 2016 and the report, issued on September 23, 2016, indicated positive results for the opiates codeine and morphine. The DCFS dependency investigator spoke with the lab director, who stated that a person

taking codeine would produce positive results for both morphine and codeine. The director stated that mother's opiate levels were " 'relatively high,' " but that one can never determine what the numbers mean therapeutically. " '[I]f you have concerns for abuse,' " the director said, " 'that would be best suited for the doctor prescribing them.' "

The jurisdiction/disposition report included multidisciplinary assessments of each child, conducted by the girls' teachers, counselor, and family members in November of 2016. N.B. is described as assertive, articulate, and resilient, but with parentified behaviors such as speaking on her younger sisters' behalf and explaining their actions when they do something wrong. The report also notes that N.B. would get frustrated and bossy, and worried "excessively" about her siblings and parents. As of the date of the report, N.B. was not performing at grade level but was demonstrating interest and making efforts to learn.

C.B. is described as caring, affectionate, and creative but also whiny, needy, and very sensitive. The report indicates that she had suffered angry outbursts during which she kicked others in frustration or distress. As of the date of the report, C.B. was not performing at grade level, but had recently demonstrated "remarkable" improvement in her homework.

L.B. is described as warm and caring, but also susceptible to crying, pouting, and temper tantrums. She was observed during the assessment meetings following her caregiver and older sister around the house to get her needs met. As of the date of the report, L.B. was performing at grade level.

All three children were developmentally on task and demonstrated no deficiencies in speech, language, motor skills,

self-care, or social functioning with peers. The evaluators observed the children interacting with mother during visits, and reported that mother was affectionate with the children and engaged them in age-appropriate activities. Mother was observed effectively comforting C.B. when she became upset after the maternal grandfather had to leave in the middle of the visit; and hugging, kissing, and “rolling on the floor” with L.B.

DCFS filed three last minute informations for the court (LMI's) in March and April of 2017 updating the court on mother's monitored visits with the children. According to an LMI filed on March 13, 2017, N.B. had told a DCFS social worker that, at every visit, mother “ ‘throws a fit and bribes [her] to go live with [mother]’ ” by telling N.B. that she will “ ‘put [her] in gymnastics and cheer and get [her] a bearded dragon.’ ” According to the LMI, R.B.'s boyfriend was the designated monitor of the visits, and, according to N.B., he and R.B. would take the children out because mother “ ‘won't go anywhere.’ ” N.B. continued, “ ‘[w]hile [mother is] yelling at me she won't let me get up. If I start to get up she yells at me or tells me to just go to foster care.’ ” N.B. told the social worker that she does not feel safe with mother, no longer wants to visit with her, and had refused to attend visits in previous weeks.

An LMI filed on March 28, 2017 informed the court that N.B. was continuing to refuse visitation with mother. According to the LMI, mother believed that the court had ordered that N.B. attend the visits, even if N.B. refused. The social worker noted, however, that the most recent minute order did not contain such language. In addition, N.B. informed K.B. that mother shoplifts during visits with her children, and that these visits are still monitored by R.B.'s boyfriend. The LMI recommended that

N.B.'s visits with mother be at N.B.'s discretion, and that visits be monitored by DCFS staff.

The third LMI, filed on April 3, 2017, reported that, on the previous day, N.B. had again refused to visit with mother. As a result, R.B. and her boyfriend called law enforcement to pick up N.B. and bring her to the visit. According to the LMI, N.B. "really did not want to go, she just did it to appease everyone."

DCFS determined that the children were at very high risk of harm and neglect if returned to father's care. DCFS assessed and evaluated mother for placement as the noncustodial parent, but found a very high risk of harm if returned to mother's custody due to her history of prescription medication abuse, lack of evidence of long-term sobriety, "significant concerns about possible methamphetamine use," "longstanding and tumultuous" history with father, and "attempt to hire [a] hitman to murder" father.

B. THE JURISDICTION/DISPOSITION HEARING

The combined jurisdiction and disposition hearing convened on March 13, 2017. The parties called no witnesses to testify, and county counsel rested upon admission of DCFS's documentary evidence.

Mother's counsel asked the court to dismiss count c-1, as there was no evidence the children suffered any physical symptoms arising from alleged emotional abuse, nor was there any evidence that the parents had recently exhibited an inability to co-parent the children. As to count b-2 against mother, mother's counsel argued that DCFS had not produced evidence that mother is abusing medication. She pointed out that mother's positive drug test derived from prescribed medication, and informed the court that mother had signed consent forms for

DCFS to speak with her doctor, but DCFS had thus far not done so. Mother's counsel argued that the agency had also failed to show a nexus between mother's alleged substance abuse and "putting these children at any risk."

At the conclusion of argument, the court found by a preponderance of the evidence that "the entire petition as alleged is true." The court based its ruling on L.B.'s statements that her mother " 'falls asleep all the time' "; on mother and father's "inappropriate" statements about each other in front of the children, which the court concluded had "subjected these children to serious emotional harm and abuse"; on mother's "erratic" behavior; on mother allegedly hiring someone to kill father; and on father's statements that mother tried to kill him. The court commented that "[all] of this is just unbelievable that children would be subjected to this kind of extremely inappropriate behavior."

As to disposition, mother's counsel did not oppose DCFS's recommendation that the children be removed from mother's custody. Rather, counsel requested a written schedule for mother's visits with the children. The court granted the request and ordered DCFS to provide a written visitation schedule.

The court found by clear and convincing evidence that remaining in the home of either parent would pose "substantial danger to the children's physical health, safety, protection, physical and emotional well-being" and declared them dependents of the court under sections 300 (b) and (c). The court ordered mother to participate in a number of services, and ordered that her visits with the children be supervised by a DCFS-approved monitor.

DISCUSSION

I. Mother's appeal is justiciable

DCFS argues that, because count b-1 alleges facts sufficient to support jurisdiction regarding father, jurisdiction would continue intact even if we reversed the findings as to mother. DCFS asserts that we should therefore dismiss mother's jurisdictional challenge.

As a general rule, “[a] minor is a dependent if the actions of either parent bring [him] within one of the statutory definitions.’” (*In re X.S.* (2010) 190 Cal.App.4th 1154, 1161.) However, California courts have held that discretion may be exercised to reach the merits of the other parent's jurisdictional challenge “in three situations: (1) the jurisdictional finding serves as the basis for dispositional orders that are also challenged on appeal; (2) the findings could be prejudicial to the appellant or could impact the current or any future dependency proceedings; and (3) the finding could have consequences for the appellant beyond jurisdiction.” (*In re A.R.* (2014) 228 Cal.App.4th 1146, 1150; accord *In re J.C.* (2014) 233 Cal.App.4th 1, 3–4; *In re Quentin H.* (2014) 230 Cal.App.4th 608, 613; *In re Christopher M.* (2014) 228 Cal.App.4th 1310, 1316–1317; *In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763.)

Mother contends her appeal is justiciable, and we agree. First, the jurisdictional findings as to mother served as the basis for the court's dispositional orders. Mother's counsel did not request a contested dispositional hearing and, when the court delivered its disposition order, mother's counsel made only one request: that DCFS provide a written visitation schedule. In other words, no additional evidence was adduced at the disposition phase beyond what was presented at the

jurisdictional phase of the hearing. Second, mother's status as an offending or nonoffending parent may prejudice her in future dependency proceedings, and could have "far-reaching" consequences respecting future dependency proceedings and mother's parental rights. (*In re Drake M.*, *supra*, 211 Cal.App.4th at p. 763; *In re Quentin H.*, *supra*, 230 Cal.App.4th at p. 613, *In re Christopher M.*, *supra*, 228 Cal.App.4th at p. 1317.) We therefore exercise our discretion to consider mother's jurisdictional challenge.

II. Standard of review

"In reviewing the jurisdictional findings and disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them." (*In re R.T.* (2017) 3 Cal.5th 622, 633.) "The term 'substantial evidence' means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value." (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) Although substantial evidence may consist of inferences, the inferences must be logical, reasonable and supported by evidence; the inferences cannot be the product of speculation or conjecture. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393–1394.)

In making our determination whether substantial evidence supports the jurisdictional findings and disposition, "we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." (*In re R.T.*, *supra*, 3 Cal.5th at p. 633.)

We may not “consider whether there is evidence from which the dependency court could have drawn a different conclusion,” but are limited to determining “whether there is substantial evidence to support the conclusion that the court did draw.” (*In re Noe F.* (2013) 213 Cal.App.4th 358, 366.) The juvenile court’s determination “will not be disturbed unless it exceeds the bounds of reason.” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.)

III. Jurisdictional findings under section 300, subdivision (b)(1)

Section 300, subdivision (b)(1) provides for jurisdiction based upon proof that a child has suffered, or that there is a substantial risk 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.” (§ 300, subd. (b)(1).)

A. COUNT B-2: SUBSTANCE ABUSE

A parent’s substance abuse may present a substantial risk of severe physical harm, warranting the exercise of dependency jurisdiction, when evidence of past conduct is probative of current conditions and there is an absence of adequate supervision and care. (*In re Natalie A.* (2015) 243 Cal.App.4th 178, 184–185.) Prior involvement in the dependency court system resulting from drug use can support a finding that a parent suffers from a substance abuse problem within the meaning of section 300, subdivision (b). (*In re Rebecca C.* (2014) 228 Cal.App.4th 720, 726–727.)

Here, we conclude that substantial evidence supports the jurisdictional finding that the children are at substantial risk of suffering serious physical harm as a result of mother’s substance use. We make no attempt to diagnose mother’s use of

prescription medication, and make no determination as to whether her use of these medications amounts to substance *abuse*. However, it is clear from her past conduct and involvement in the dependency system that her use of prescription medications constitutes a risk to the children within the meaning of section 300, subdivision (b). (*In re Rebecca C.*, *supra*, 228 Cal.App.4th at p. 727.) L.B. suffered withdrawal symptoms after birth due to mother's use of prescription medication, and two prior DCFS referrals were substantiated at least in part based on allegations mother used methamphetamine.

Of course, mother's past conduct alone is not substantial evidence that the children are *currently* at risk. However, mother's history of substance abuse problems is probative when viewed in concert with evidence of her behavior at the time of the jurisdiction and disposition hearing. There is ample evidence that mother's substance use impaired her ability to care for her children at the time of the jurisdiction/disposition hearing. L.B. reported that mother falls asleep "all the time" when the girls are with her. L.B. also reported that, on at least one occasion, mother "[s]aid she doesn't know me" after taking her pills, and that her older sisters cook for and take care of the girls during visits with mother. N.B. disclosed that mother "acts crazy" when she is tired and doesn't have a lot of food. C.B. reported that she and her sisters make their own food when they are with mother.

We cannot conclude that mother is able to adequately supervise and protect her children if she cannot manage to stay awake or prepare meals when the girls are with her. Particularly troubling is the suggestion that mother's cognitive capacities may be so diminished by her prescription medication that she does not

even recognize her youngest child as her own. It certainly may be the case, as mother claims in her opening brief, that these behaviors are mere side effects of her prescription medication. The task before us, however, is not to determine the *cause* of mother's behavior; it is to examine the *consequences* of her drug use with respect to her children and determine whether such consequences constitute substantial evidence that she is unable to adequately supervise or protect her children, such that they are at substantial risk of suffering serious physical harm.

Reviewing the record in the light most favorable to the court's determinations, we conclude that substantial evidence supports the court's jurisdictional finding that, due to mother's substance use, N.B., C.B., and L.B. are at substantial risk of suffering serious physical harm or illness as a result of mother's failure or inability to adequately protect or supervise her children. We therefore affirm the jurisdictional order against mother as to count b-2.

B. COUNT B-3: EMOTIONAL ABUSE

As stated above, jurisdiction under section 300, subdivision (b)(1) requires a finding that a child has suffered, or is at substantial risk of suffering, serious *physical* harm or illness resulting from a parent's inability to supervise or protect the child. There is no provision in this section of the statute to support jurisdiction based on emotional harm, and we have previously reversed where the court has erroneously conferred jurisdiction for emotional harm under section 300, subdivisions (a) or (b). (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717–718.) Here, the court did not have any authority to “assert jurisdiction on grounds not contained in the code.” (*Id.* at

p. 718.) We therefore reverse the jurisdictional order against mother as to count b-3.

IV. Jurisdictional findings under section 300, subdivision (c)

Section 300, subdivision (c) provides for jurisdiction based upon proof that the child “is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care.” (§ 300, subd. (c).) Section 300, subdivision (c) “extends both to a child who is suffering serious emotional damage, and a child who is at *substantial risk* of suffering serious emotional damage.” (*In re A.J.* (2011) 197 Cal.App.4th 1095, 1104.)

It is evident from the record that the children have not exhibited any of the symptoms of serious emotional damage described in the statute. The MAP assessments indicate that all three girls were developmentally on task. Although N.B. and C.B. were not performing at grade level, each was steadily improving. And, while the girls exhibited problems with emotional regulation, their symptoms are not beyond what one would expect from children exposed to parental conflict. There is no evidence, therefore, that the children were exhibiting any symptoms of serious emotional damage at the time of the jurisdiction and disposition hearing.

We therefore turn to the question whether mother’s emotionally abusive behavior rose to the level of putting the girls at substantial *risk* of severe emotional damage.

There is no doubt, as the court observed, that mother has exhibited extremely troubling behavior in the presence of her children. She has attempted to bribe N.B. into living with her, despite the court's explicit and direct admonishment that she not discuss any aspects of the case with her children. Mother rarely takes the children out and, when she does, she models criminal behavior by shoplifting in front of them. She has yelled at N.B. when N.B. wanted to go outside, presumably to play or enjoy outside activities as any nine-year-old child would. And, mother has threatened N.B. with foster care simply because N.B. wished to go outside during a court-ordered visit.

With respect to the statements that mother put a "hit" on father's life and poisoned his food, the court did not articulate any specific factual findings or determinations regarding the credibility of these allegations. In taking jurisdiction over the children however, the court based its decision in part on "mother allegedly hiring someone to kill father" and "father's statements that mother tried to kill him."

As to the alleged "hit" on father's life, we find it puzzling that the court apparently relied on this allegation in assuming jurisdiction over the children with respect to mother. The LAPD had already determined that the threat was not credible because S.B. had attempted to make a "deal" with law enforcement under similar circumstances in the past. The LAPD, having had direct contact with S.B. and prior information about his drug history and motives, is arguably in a much better position than the court to determine whether the allegation made by S.B. and father was credible. We also find it puzzling that DCFS relied on this allegation in its jurisdiction/disposition report. In its detention report, DCFS stated "there appears to be no credibility to

[father's] allegations.” Yet, DCFS credited the allegation in its jurisdiction/disposition report, which stated unequivocally, “[a]dditionally, the mother attempted to hire [a] hitman to murder the children’s father.” There is no explanation in the report as to why DCFS apparently credited the allegation when it had previously concluded that the hitman allegation lacked credibility.

The record is sparse with respect to the allegation that mother poisoned father’s food. The evidence of this allegation consists of father’s statement, supported by K.B.’s allegation that mother attempted to poison her food as well. Contrary evidence consists of mother’s denial alone.

If the allegations that mother put a hit on father and poisoned his food are indeed true, we could easily conclude that mother put the girls at risk of severe emotional damage. A young child with a persistent fear that one parent would murder the other could easily develop severe anxiety, depression, withdrawal, or aggressive behavior toward self or others, constituting the type of serious emotional damage contemplated in section 300, subdivision (c). If the allegations are not true, the children are nonetheless at risk of serious emotional damage because they *believe* that mother tried to kill father on one occasion and, according to L.B. still “want[ed] to kill our dad.” We note that there is no evidence in the record that mother conveyed any such wishes or intentions to the children; to the contrary, the record is clear that father imparted these beliefs to the girls. Therefore, although father’s statements to the children that mother wanted him killed support a jurisdictional finding as to father, we determine, on the record before us, that the court

improperly relied on the allegation that mother put a hit on father when rendering its findings as to mother.

Nonetheless, we find there is substantial evidence supporting the jurisdictional finding as to count c-1 against mother as a whole. Mother shoplifted in front of her children, attempted to bribe N.B. into living with her, and threatened her with foster care. Furthermore, DCFS had already sustained allegations in a 2003 referral that mother emotionally abused her stepson.

After a careful review of the record, we affirm the court's jurisdiction over the children under section 300, subdivision (c). It is not for us to assess mother's credibility, or to make any factual determinations as to the allegations against mother; these conclusions are to be drawn by the trial court alone. (*In re R.T.*, *supra*, 3 Cal.5th at p. 633.) Nor do we reweigh the evidence or express an independent judgment. (*In re Alexzander C.* (2017) 18 Cal.App.5th 438, 446.) Rather, we must determine whether a "reasonable trier of fact could have found for the [appellant] based on the whole record.'" (*Ibid.*)

As we cannot conclude that the trial court's findings regarding the allegations against mother "exceed[] the bounds of reason," we must affirm the jurisdictional order against mother as to count c-1.

V. Dispositional order

Before a dependent child may be taken from the physical custody of a parent, section 361, subdivision (c)(1) requires the juvenile court to find "clear and convincing evidence" of "a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home." (§ 361, subd. (c)(1).) "The parent need not be

dangerous and the minor need not have been actually harmed before removal is appropriate. The focus . . . is on averting harm to the child.’” (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 969.) “The court may consider a parent’s past conduct as well as present circumstances.” (*In re N.M.* (2011) 197 Cal.App.4th 159, 170.)

Here, the record demonstrates that mother has frequently fallen asleep while the children were in her care, rendering her incapable of ensuring their safety. On one occasion, mother was so impaired by the effects of her medication that she did not recognize her youngest daughter. Mother has failed to prepare meals for the children, leaving them to fend for themselves or for their older sister to provide for them.

Despite the court’s explicit order to not discuss the case with the children, mother attempted to bribe N.B. into living with her, and threatened her with foster care when N.B. wanted to go outside. Mother’s inability to comply with this order bodes poorly for her ability to comply with any other services or programs required to assist her in providing her children with a stable home.

On some of the rare occasions when mother took the children out, she shoplifted in their presence. As most parents know, children learn and grow by modeling the behavior of the adults around them. By stealing in front of her children, mother not only evidenced extremely poor judgment, but tacitly condoned criminal behavior. By deliberately exposing these young girls criminal conduct, mother places them at risk of following in her footsteps and eventually exhibiting antisocial behavior themselves.

We therefore conclude that substantial evidence supports the court's dispositional order removing the children from mother's physical custody.

VI. Visitation order

The juvenile court has authority to limit and control a parent's visitation rights under section 361, subdivision (a)(1) and section 362. (*In re Julien H.* (2016) 3 Cal.App.5th 1084, 1090.) Under section 361, when a minor "is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian." (§ 361, subd. (a)(1).) But the limitations the court orders "may not exceed those necessary to protect the child." (*Ibid.*) And section 362 only provides authority for the court to "make any and all *reasonable* orders for the care, supervision, custody, conduct, maintenance, and support" of a child who is a dependent of the court. (§ 362, subd. (a), italics added.) A juvenile court's visitation orders may be reversed only on a clear showing of abuse of discretion. (*In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 465.)

The substantial evidence supporting the court's dispositional order also supports the court's visitation order. Again, mother has already defied a court order to refrain from discussing any aspects of the case with her children by attempting to bribe and threaten N.B., has shoplifted in front of the girls, and cannot consistently prepare meals for them. We therefore conclude the court did not abuse its discretion in ordering monitored visits for mother.

DISPOSITION

The trial court's jurisdictional findings under Welfare and Institutions Code section 300, subdivision (b) as to count b-3 is reversed. In all other respects, the court's findings and orders are affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

I concur:

ROTHSCHILD, P. J.

CHANEY, J.