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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re S. M., et al., Persons Coming Under
the Juvenile Court Law.

B248380

(Los Angeles County
Super. Ct. No. CK93089)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Appellant.

v.

Y. M.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Veronica S. McBeth, Judge. Affirmed.

Janice A. Jenkins, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Navid Nakhjavani, Deputy County Counsel for Plaintiff and Appellant.

Y. M. (mother) appeals from the juvenile court's jurisdictional order establishing dependency jurisdiction over her infant son, S. (born in August 2013) pursuant to Welfare and Institutions Code section 300.¹ Mother also challenges the dispositional orders removing S. from mother's custody but placing him in the same home where mother lives. Mother contends that substantial evidence does not support the juvenile court's jurisdictional and dispositional findings, and that the juvenile court exceeded its authority in removing the child from her custody then placing the child in the same home where mother resided. Mother contends that such a disposition is inconsistent with the required substantial danger removal finding.

The Los Angeles County Department of Children and Family Services (DCFS) cross-appeals, arguing that the juvenile court erred in dismissing the allegations of domestic abuse alleged in the section 300 petition filed on behalf of S.

We find no error and affirm the orders.

COMBINED FACTUAL AND PROCEDURAL BACKGROUND

Prior history with DCFS

On April 13, 2012, DCFS received an immediate response referral regarding mother and S.'s older brother, Matthew (born in October 2011). Mother had gone to a clinic and was expressing suicidal thoughts. She had a plan to kill herself by overdosing on pills. Mother disclosed that she did not feed Matthew and did not change his diapers. She stated that she wished the child had never been born and that it would be better if the child were not around. Mother was put on a psychiatric hold and transported to Los Angeles County USC Hospital.

A social worker met with Matthew's maternal aunt and uncle, Maria and David C., who agreed to care for Matthew during mother's hospitalization. Mother's relatives were surprised by mother's hospitalization. They had not heard mother voice any intention to harm Matthew, but reported that mother received mental health services when she was 15 years old.

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

The social worker then met with Matthew's maternal great aunt and uncle, who reported that mother and Matthew had resided with them for two months. Prior to that, mother lived in Fresno with Matthew's father, Edgar M. (father). Maternal great uncle reported that mother was in an abusive relationship with father, who physically abused mother in the past, including during her pregnancy.

When the social worker contacted father, he admitted that there had been prior instances of domestic violence and that he had been arrested for domestic violence in the past. Father indicated that the last incident of domestic violence occurred in September 2011. Father had not seen mother or Matthew in two months and did not know where they were residing. Father reported that he worked in construction and due to the nature of his job, he stayed in various hotels and did not have an address.

Mother was released from the hospital on April 16, 2012. She experienced frustration and thoughts of harming herself, but not Matthew. She reported having felt very depressed and frustrated when Matthew was born. Due to mother's hospitalization and the domestic violence issues, DCFS took Matthew into protective custody.

DCFS conducted a more extensive interview with mother the following day. In that interview, mother denied stating that she wished Matthew had never been born, though admitted moving in with her relatives in order to avoid an abusive relationship. She stated that during her pregnancy she had many intense arguments with father. Father would try to punch her in the stomach, push her against walls and pull her arms. Mother suffered a black eye after father punched her.

On April 18, 2012, DCFS filed a section 300 petition on behalf of Matthew based on the prior acts of domestic violence and mother's mental health concerns. The juvenile court found a prima facie case for detaining Matthew, who was placed with his maternal great aunt and uncle, Mr. and Mrs. C. Mrs. C. reported being aware that mother was in an abusive relationship, having seen marks and bruises on mother's body.

On April 26, 2012, mother was again interviewed. She reported that she began living with father in November 2009. Father drank and told mother she was useless. He then became physically violent towards her, pushing mother and grabbing her arm. On

one occasion, father dragged mother to the garage in an attempt to lock her there. During an October 2011 incident, the police arrived and father was arrested. Mother admitted telling the clinic staff that she wanted to harm herself. She disclosed feeling depressed after giving birth to Matthew, and admitted that she had received psychiatric care in the past.

On May 16, 2012, mother filed a waiver of trial rights form, as well as a court-ordered case plan. At the hearing on the same date, the juvenile court sustained the petition, declared Matthew a dependent of the court, and ordered mother to participate in the case plan.

On June 28, 2012, mother's therapist, Lynn Barnard, prepared a report regarding mother's progress in therapy. Mother was sincere about her therapy sessions and was progressing well. Mother would be continuing with therapy to address issues of post-partum depression, but did not need medication and was not experiencing any depressive symptoms.

In a last minute information for the court filed July 2, 2012, DCFS reported that it had located father in Kern County State Prison. Father was not scheduled to be released until July 15, 2016, and was scheduled to be deported at that time.

Detention of S.

Mother gave birth to S. on August 28, 2012. Mother was in compliance with her case plan for Matthew, and there were no indications that mother was suffering emotional distress. The social worker set up a safety plan and a team decision making meeting (TDM) for mother.

The social worker learned that prior to S.'s birth, mother was living with Mr. and Mrs. C., against the orders of the juvenile court. Mr. and Mrs. C. acknowledged that mother was not permitted to live with them, and they were not planning on allowing mother to return to their home after giving birth to S. Mother did not know where she would live and told the social worker that she might be able to stay with the maternal aunt. The social worker noted that mother was not prepared for the baby. She did not have any necessary items such as diapers or clothing and did not know where she and the

baby were going to live. DCFS's safety plan established that mother would live with the maternal aunt, Maria, until more stable housing could be found.

The TDM took place on September 5, 2012. Mother, the children, maternal great aunt and uncle, a cousin, maternal grandmother, two social workers, a TDM coordinator, a Department of Public Social Services (DPSS) coordinator, and Department of Mental Health psychologist Ruth Truglio were all present.

DCFS reported that during the TDM, mother began to express feeling depressed but stopped mid-sentence. She expressed concerns about not having money or stable housing. Mother's demeanor at the TDM led Ms. Truglio to make a finding that mother lacked coping skills and presented as depressed. Ms. Truglio asked mother to provide examples of some stressors. Mother mentioned finding a place to live. She also blamed DPSS and DCFS for her circumstances. Mother was living with maternal grandmother but stated that the living situation was only temporary as maternal grandmother's landlord would not allow mother to continue living there.

DCFS reported that mother continued to exhibit signs of depression, lacked coping skills, did not appear able to take care of herself and needed additional time to stabilize.

Mother agreed to allow DCFS to take S. into protective custody. The safety plan required mother to continue participating in therapy, parenting classes, and individual counseling to address domestic violence issues. All parties present signed the safety plan. S. was placed with another maternal great aunt and uncle, Mr. and Mrs. M., in San Ysidro.

Section 300 petition and initial reports

On September 10, 2012, DCFS filed a section 300 petition on behalf of S. based on mother's history of mental health issues. At the detention hearing on the same date, the juvenile court found a prima facie case for detaining S. under section 300, subdivisions (b) and (j). On October 12, 2012, DCFS filed a first amended petition further alleging that S. was at risk of harm due to the parents' history of domestic violence.

In its October 16, 2012 jurisdiction/disposition report, DCFS indicated that it was unable to interview mother regarding the new petition filed on behalf of S. Mother's telephone number had been disconnected and mother did not contact the dependency investigator prior to the preparation of the report. DCFS was waiting to interview father in prison.

Mother's therapist, Ms. Barnard, provided another letter for the juvenile court dated October 12, 2012, in which she reported that mother had been participating in therapy with Vilma Culajay, under Ms. Barnard's supervision. Ms. Barnard recommended that mother be allowed to live with her children in the home of Mr. and Mrs. C. with the assistance of family preservation services. DCFS was not able to obtain a progress report from Ms. Culajay.

In a supplemental report filed January 9, 2013, DCFS reported that mother had completed her parenting classes and informed the social worker that she wished to take additional classes.

The maternal grandmother, with whom mother was living, reported overhearing mother talking on the phone with father. Mother told father that once she obtained custody of the children, she planned to move to Mexico to be with him. Maternal grandmother was very concerned with mother's plan given the parents' history of domestic violence.

DCFS recommended that the juvenile court provide mother with additional family reunification services.

Ms. Cujalay provided a progress report in January 2013. She had been working with mother on a weekly basis since September 21, 2012. Mother had missed three therapy sessions but was compliant and worked hard at meeting her therapy goals. Her symptoms of anxiety had decreased and she had learned soothing techniques. Ms. Cujalay reported that mother was working very hard to reunify with her children.

Adjudication

On February 7, 2013, the matter was before the juvenile court for both adjudication of the petition filed on behalf of S. and a six-month review hearing for Matthew's case.

Mother's counsel called Ms. Barnard who testified that she had been working with mother since April 2012. She related what mother explained about the circumstances surrounding the psychiatric hold. Mother had gone to a clinic and was told she was pregnant with a second child. Mother "lost it," and it was determined that mother would be placed on a psychiatric hold as a "danger to herself." Ms. Barnard explained that mother "wasn't prepared to have another child" and the doctor's order stated that mother's words were "she didn't want to be in this world anymore."

When mother initially came in to see Ms. Barnard, "she was very distraught, fearful, crying and unable to articulate the whole story." At that time Ms. Barnard diagnosed mother with "provisional major depressive disorder with post partum." However, in subsequent appointments, mother's diagnosis was "changing to a depression disorder not otherwise specified with basic symptoms of depression." Ms. Barnard concluded that mother "did not meet the full criteria for major depressive disorder."

Ms. Barnard testified that mother had shown continual growth throughout her treatment. Ms. Barnard did not believe that mother was a risk to herself or her children, however, Ms. Barnard admitted that mother did not inform her of the violence which occurred between mother and father. Instead, Ms. Barnard "had to bring it up after [she] heard about it." Ms. Barnard was not aware that mother had spoken with father in November 2012. She was also not aware that mother did not have anything prepared for S. after his birth, such as diapers or clothing. Ms. Barnard admitted she had never observed mother with the children.

After hearing argument from counsel, the juvenile court sustained the amended petition. The juvenile court dismissed the count regarding the parents' history of domestic violence, finding no nexus between the incidents of domestic violence and a risk of harm to S. The sustained petition contained the following counts:

“(b)(1) The child, [S.’s] mother . . . has a history of mental and emotional problems which in the past have rendered the mother incapable of providing regular care and supervision of the child. On 4/13/2012, mother was involuntarily hospitalized for the evaluation and treatment of mother’s psychiatric condition. The child’s sibling, [Matthew] is a current dependent of the Juvenile Court due to the mother’s mental and emotional problems. Such mental and emotional condition on the part of the mother endangers the child’s physical health and safety and places the child at risk of physical harm and damage.”

“(j)(1) The child, [S.’s] mother . . . has a history of mental and emotional problems, including a diagnosis of major depressive disorder and post partum onset, which has rendered the mother incapable of providing regular care and supervision of the child. On 4/13/2012, the mother was involuntarily hospitalized for the evaluation and treatment of the mother’s psychiatric condition. The child’s sibling, [Matthew] is a current dependent of the Juvenile Court due to the mother’s mental and emotional problems. Such mental and emotional condition on the part of the mother endangers the child’s physical health and safety and places the child at risk of physical harm and damage.”

The court permitted mother to move into the home of maternal great aunt and uncle, Mr. and Mrs. C., with Matthew. The court ordered interactive therapy for three weeks and a follow-up report. The court noted that after seeing how mother does with Matthew, the court would consider whether S. could move in as well.

Disposition

In its February 28, 2013 interim review report, DCFS indicated that Matthew was doing well in the home of Mr. and Mrs. C. Mother was interacting appropriately with Matthew and attending to his needs. Mr. and Mrs. C. had an extra room and were willing to have S. in the home as well.

The disposition hearing for S. took place on March 4, 2013. Ms. Barnard testified on behalf of mother that she did not see any risk in mother continuing to care for Matthew. She had observed mother with Matthew on two occasions, and found mother was very patient with Matthew and had a lot of social support.

Mother's counsel asked that Matthew be returned to mother's custody on the condition that mother continue to live with Mr. and Mrs. C. She also asked for S. to be placed in mother's custody. The children's counsel agreed. Counsel for DCFS argued that S. should remain suitably placed and family reunification services be continued for Matthew. Counsel expressed concerns that mother and Matthew had only been living together for three weeks.

The juvenile court granted mother's request that Matthew be returned to her custody as long as mother remained in the home of Mr. and Mrs. C. The court expressed some doubt as to the value of Ms. Barnard's testimony, stating:

“I don't know how anybody based on two interactive sessions given mother's wanting to kill herself and not wanting to feed the child or change the diapers could say after two sessions that she doesn't have any problems knowing mother's history.”

The court reiterated that it was returning Matthew “only if they remain in the home of maternal great aunt and uncle [Mr. and Mrs. C.], and that mother is unmonitored inside the home, but monitored outside the home.” The juvenile court did not believe that mother was “able to handle two young children having just recent [*sic*] as April having had a 5150 hospitalization.” The court stated, “I do not think that she is able at this point to manage.” For that reason, the court specified that S. was to be placed with Mr. and Mrs. C. Mother was granted unmonitored visits with S. in his placement, but monitored visits outside of the home.

The court recognized that mother was “doing better” and thought “it would be a good idea to have mother, while she has got the aunt and uncle there, be able to observe how she is doing with the child.” The court observed that mother “loves her children” but that “mother's breakdown” was “serious.” The court noted that the children were one year old and six months old, and could not report anything on their own. The court felt that “given the major depressive symptoms that she had and her thoughts about taking her own life, we definitely need to proceed a little more with caution.”

The court declared S. to be a dependent under section 300, found that there existed a substantial danger to the child if returned to mother and that there were no reasonable means to protect the child without removal.

On March 20, 2013, mother filed a notice of appeal. On May 3, 2013, DCFS filed a notice of cross-appeal.

Events occurring after notices of appeal filed

On August 30, 2013, the juvenile court terminated S.'s suitable placement order and placed him home-of-parent mother under the supervision of DCFS. The court continued the matter for a section 364 progress report for both Matthew and S. on February 28, 2014.

DISCUSSION

I. Mother's appeal

A. Jurisdictional findings

Mother first challenges the juvenile court's findings that S. was a child described under subdivisions (b) and (j) of section 300. Mother argues that the evidence was insufficient to establish that mother's history of mental or emotional problems placed S. at substantial risk of serious harm or illness.

1. Standard of review

In order for the juvenile court to sustain a dependency petition, the court must determine, by a preponderance of the evidence, that the child is described by section 300. (§ 355, subd. (a); *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 248.) On appeal, jurisdictional findings are reviewed for substantial evidence. (*In re James C.* (2002) 104 Cal.App.4th 470, 482.) Under this standard, we must examine the whole record in the light most favorable to the findings of the juvenile court, and defer to the juvenile court on issues of credibility. (*In re Tania S.* (1992) 5 Cal.App.4th 728, 733-734.) We uphold the juvenile court's orders and findings if any substantial evidence, contradicted or uncontradicted, supports them. We resolve all conflicts in support of the juvenile court's findings, and indulge all legitimate inferences in favor of affirmance. (*In re John V.* (1992) 5 Cal.App.4th 1201, 1212.)

2. Substantial evidence supports the juvenile court's findings

Section 300, subdivision (b), provides that a child may be declared a dependent of the court when:

“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 the child’s parent or guardian to adequately supervise or protect the child . . . 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.”

Sufficient evidence existed to support the trial court’s finding that S. was a child described under section 300, subdivision (b). The evidence showed that mother first came to the attention of DCFS when she learned that she was pregnant with S. She expressed a desire to kill herself and stated that she wished her six-month-old child, Matthew, had never been born. Mother disclosed that she did not feed Matthew and did not change his diapers. Mother’s behavior was sufficiently alarming that she was placed on an involuntary psychiatric hold.

Mother’s behavior exhibited more than a desire to harm herself. She indicated that she had harmed her child in the past by declining to feed him or change his diapers. She also expressed a wish that he had never been born. She admitted that the entire breakdown was caused by the realization that she was pregnant with S. It was reasonable for the juvenile court to conclude, given mother’s outburst, that S. was at substantial risk of harm. If mother declined to feed and care for her first child, it was reasonable for the juvenile court to conclude that she would behave in the same way towards her second child. This is especially true because mother had such a strong negative reaction to the news that she was pregnant.

In addition, mother had a history of mental illness dating back to when she was a teenager. She admitted being treated for depression during her teenage years, and

reported feeling depressed again after Matthew was born. She stated that she did not have the energy to care for him properly.

As a result of mother's mental state, Matthew was declared a dependent of the court and mother was ordered to participate in mental health counseling.

By the time of S.'s birth on August 28, 2012, mother's ability to cope had not improved. She was unprepared for S.'s birth, with no plan for where she would reside with the baby. She had previously been living with Matthew's caregivers against court orders, and would not be allowed to return. Mother was also not prepared for S.'s birth in that she had no diapers, clothing, or furniture for the baby. When the social worker asked mother about her plan for the baby, mother did not appear to know. At a subsequent TDM, mother began to express feelings of depression but stopped mid-sentence. She disclosed concerns about money and a lack of stable housing. The psychologist present at the TDM concluded that mother lacked coping skills, lacked ability to follow through and presented as depressed, needy and emotional. Mother did not appear to be able to take care of herself let alone a newborn. Throughout the TDM, mother displayed behaviors consistent with depression, and it did not appear that she had progressed in any understanding of what was happening to her. She agreed to detention of S. and a safety plan, which included her participation in mental health services.

Mother's therapist, Ms. Barnard, acknowledged that mother had a diagnosis of a "depression disorder not otherwise specified with basic symptoms of depression." While Ms. Barnard believed mother was capable of taking care of her children, she admitted she had never observed mother with the children. Ms. Barnard was unaware of the report that mother had recently spoken with father, and was also unaware that at the time of S.'s birth, mother was totally unprepared for the baby and did not even have a place to live. Ms. Barnard admitted that mother was "ill prepared" for S.'s birth. Under the circumstances, it is not surprising that the juvenile court gave little weight to Ms. Barnard's testimony that mother was capable of taking care of S.

The evidence described above is sufficient to support the trial court's finding that S. was a child described under section 300, subdivision (b). Proof of current or prior

actual harm is unnecessary -- a child comes under the statutory definition where there exists a “substantial risk that the child *will suffer*, serious physical harm or illness” as a result of the parent’s inability to care for him. (§ 300, subd. (b).) We do not reweigh the evidence or express any independent judgment thereon -- instead, our task is to determine whether there is sufficient evidence to support the findings of the trial court. (*In re Laura F.* (1983) 33 Cal.3d 826, 833.) We find no error in the juvenile court’s determination that a substantial risk of harm existed here.

Section 300, subdivision (j) provides, in pertinent part, that a child may be declared a dependent of the court where:

“The child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.”

The evidence before the juvenile court showed that S.’s brother, Matthew, was declared a dependent of the court during the time that mother was pregnant with S. Mother had expressed suicidal thoughts as well as admitting she did not properly care for Matthew by failing to feed him or change his diapers. She expressed a wish that Matthew had never been born and stated that Matthew would be better off without her around. As set forth above, this behavior resulted in mother’s involuntary psychiatric hold, and also resulted in Matthew being declared a dependent of the court. This evidence supports the juvenile court’s finding that S.’s sibling had been abused or neglected as defined in the relevant subdivisions of section 300.

The evidence also showed that a substantial risk to S. remained at the time of the jurisdictional hearing. Matthew had not been returned to mother’s custody. The juvenile court expressed concern over what mother’s interaction with Matthew alone would be, and noted that if things went well with mother and Matthew, the court would consider

allowing S. to move into the home as well. Considering that S. was about the same age as Matthew was when mother first revealed her neglect of Matthew, the court was justified in finding a substantial risk to S. And given that Ms. Barnard had never observed mother with her children, the juvenile court was entitled to discount her testimony. No error occurred.

B. Dispositional order

Mother next challenges the juvenile court's order removing S. from mother's physical custody. Mother argues that there was insufficient evidence to support the required findings that a substantial danger to S. existed and that there was no reasonable means to protect the child without removal. Mother also argues that placement of S. in the same home where mother was living was not only inconsistent with the substantial danger finding, but was a disposition not authorized by the applicable statute.

We have granted DCFS's request for judicial notice of postjudgment events. On August 30, 2013, S. was returned to mother's custody. DCFS argues that because S. has been returned to mother's custody, her appeal of the removal order is now moot. Mother disagrees, arguing that the issue is not moot because of the potential for adverse consequences in the future, and because it presents an issue likely to recur.

We address mother's two arguments separately below, and conclude that reversal is not required.

1. Substantial evidence supports the juvenile court's removal order

Mother argues that her substantial evidence argument is not moot because of potential adverse consequences in the future. Mother points out that an erroneous dispositional order could affect the outcome of subsequent proceedings in this case; and that unless the order on disposition is reversed, mother is liable to the county for the costs of S.'s care while placed out of home. (§ 903.) Finally, mother argues, there is a potential for adverse consequences if a subsequent proceeding is ever initiated involving any of mother's children. (See *In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.) In an abundance of caution, we briefly address the merits of mother's substantial evidence argument. (*Id.* at p. 1489.)

As set forth above, the juvenile court properly asserted jurisdiction over S. due to mother's inability to parent the child and mother's neglect of S.'s sibling. Once S. was adjudged a dependent of the court, the court had the authority to limit mother's control over him. (§ 361, subd. (a)(1).) Such authority included the authority to remove him from mother's custody. (§ 361, subd. (c)(1).) In order to remove S. from mother's custody, the juvenile court was required to make a finding that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody." (§ 361, subd. (c)(1).)

There is an overlap between a finding of jurisdiction based on a substantial risk of serious physical harm under section 300, subdivision (b), and a removal finding at disposition based on a substantial danger to the physical health, safety and protection of the child under section 361, subdivision (c). (See *In re Rocco M.* (1991) 1 Cal.App.4th 814, 826 ["[s]ince the evidence warranted a finding of substantial risk of serious physical injury, it also appears to have supported a finding under section 361 . . . of a substantial danger to the minor's physical health" (citing earlier version of the statute)].) Accordingly, the very same evidence discussed above in connection with the juvenile court's jurisdictional findings also supported the court's dispositional order. We need not repeat that evidence in detail here. Mother exhibited suicidal intentions and admitted to neglecting S.'s older sibling. Mother stated that she was not ready for another baby and was entirely unprepared for S.'s birth. At the time of the dispositional hearing, the juvenile court found that mother was not able to manage the child given her prior severe depression. Sufficient evidence supports the juvenile court's determination that there existed a substantial danger to the child if returned to mother, and that there were no reasonable means to protect the child without removal.

2. The issue of unauthorized disposition is moot

Next, mother argues that placement of S. in the same home with mother after removal was unauthorized by the applicable statute. Mother has cited cases suggesting

that a dispositional order removing a child from a parent's custody, then placing the child back in that parent's home, is an unauthorized disposition. (*In re Damonte A.* (1997) 57 Cal.App.4th 894, 899 ["Nowhere in the statutes or rules is there authorization for the court to declare a dependency, order the dependent child removed from the physical custody of its parents, order the care, custody, control and conduct of the minor to be under the supervision of the probation officer and then direct the probation officer to temporarily place the minor back into the home from which it was removed"]; *In re Andres G.* (1998) 64 Cal.App.4th 476, 481 ["We are troubled by, what at least appears to be, the artifice of making a finding that it is necessary to remove a child from the physical custody of the parents, and thus, place custody with [the] Department, and then immediately place the child physically back in the home"].)

These cases are distinguishable because in both, it was apparent that the removal orders were unnecessary and that the findings of substantial risk of harm were not supported by the evidence. (See also *Savannah B. v. Superior Court* (2000) 81 Cal.App.4th 158, 161 [DCFS "conceded that there was no substantial evidence to support the finding that [the child] would have been endangered by return to [mother]"].) Here, DCFS has made no such concession. It is clear that the juvenile court did not engage in an "artifice" (*Andres G.*, *supra*, 64 Cal.App.4th at p. 481), but instead felt that there was a very real risk to S. if he was released to mother's custody. The juvenile court placed S. with maternal great aunt and uncle due to the severity of mother's previous breakdown and mother's inability to handle two young children at that time. Mother --who was otherwise essentially homeless -- was permitted to live in the home. Mother was not injured by this disposition, which was favorable to her.

Further, as set forth above, S. has since been returned to mother's custody. Thus, we can offer mother no effective relief, and the issue is moot. (See *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054 ["An appeal becomes moot when . . . the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief"].) "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.]” (*Ibid.*)

In *In re Yvonne W.* (2008) 165 Cal.App.4th 1394, a mother challenged the juvenile court’s finding, made at the 18-month review hearing, that returning her child to her would create a substantial risk of detriment to the safety, protection, or physical and emotional well-being of the child. The mother had completed court-ordered services and maintained her sobriety, but was living at a long-term shelter. In making its finding that the child should not be returned to mother’s custody, the juvenile court cited the child’s expression of fear, anxiety and unhappiness with the mother’s living arrangement. While the appeal was pending, the agency made a motion to dismiss the appeal as moot because the child had since been returned to the mother’s custody. The Court of Appeal declined to dismiss the appeal as moot, finding that the issue was one of continuing importance because it presented a “challenge [to] the court’s finding that a parent’s housing, previously deemed by the Agency to be adequate, creates a substantial risk of detriment to a minor when there are no other protective issues to warrant continued out-of-home placement. [Citation.]” (*Id.* at p. 1404.)

The matter before us does not present such an important issue. A removal order under section 361 based on jurisdictional findings sustained under section 300, subdivisions (b) and (j), is not a novel issue. Any error in allowing mother to reside with the child and his caregivers was in mother’s favor, and is now moot.

II. Cross-appeal

In its cross-appeal, DCFS argues that substantial evidence does not support the juvenile court’s dismissal of the allegations that the parents’ acts of domestic violence placed S. at risk of harm.

DCFS argues that the standard of review for a court’s decision to dismiss allegations in a dependency petition is substantial evidence. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199.) However, mother argues that the appropriate standard for a failure of proof, such as DCFS’s failure to provide sufficient evidence to sustain its allegations, is different. Mother cites *In re I.W.* (2009) 180 Cal.App.4th 1517, 1528 for

the proposition that “where the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.]” Specifically, the *I.W.* court held that the question becomes “whether the appellant’s evidence was (1) ‘uncontradicted and unimpeached’ and (2) ‘of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.’ [Citation.]” (*Ibid.*)

We find that we need not resolve this dispute because under either standard, the juvenile court’s decision must be upheld.

DCFS argues that the evidence that mother and father engaged in domestic violence was uncontested. Mother admitted that such acts of violence between the parents occurred. However, the juvenile court did not base its decision on its disbelief of the allegations of domestic violence. Instead, the juvenile court made it clear that its decision was based on the fact that there was no nexus between the parents’ domestic violence and any risk of harm to S. The uncontested evidence showed that father was incarcerated throughout the dependency proceedings; was not scheduled to be released until July 2016; and then was scheduled to be deported.

The evidence thus showed that father was not involved with the family at all and was unable to be physically present with the family. While domestic violence between the parents occurred in the past, the evidence supported the juvenile court’s decision that any past such incidents presented no current risk of harm to S. DCFS’s speculation about potential future acts of domestic violence, with father or other partners, does not provide a sound basis for overturning the juvenile court’s decision.

DISPOSITION

The orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST