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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re E.Z., a Person Coming Under  
the Juvenile Court Law.

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LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARLENE S.,

Defendant and Appellant.

B294716

(Los Angeles County  
Super. Ct. No. 18CCJP06423)

APPEAL from an order of the Superior Court of Los  
Angeles County, Diane Reyes, Judge. Reversed and vacated.

Maureen L. Keaney, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,  
Assistant County Counsel, Navid Nakhjavani, Deputy County  
Counsel, for Plaintiff and Respondent.

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Marlene S. (mother) appeals from the juvenile court's orders declaring her son a dependent of the court under Welfare and Institutions Code section 300, subdivision (b), and ordering her to undergo drug testing and participate in parenting courses and individual counseling. She contends no substantial evidence supports the orders. We agree and reverse.

### **BACKGROUND**

The family, as relevant here, consists of mother and E.Z., her seven-year-old son. Mother also has a 10-year-old son and an adult son, who factor into this appeal only indirectly.

On July 18, 2018, the Department of Children and Family Services (DCFS) received a referral alleging mother had a history of methamphetamine and marijuana use and habitually left her children with maternal relatives for extended periods without their consent. The referring person reported that E.Z. had been diagnosed with autism and needed to be monitored at all times, but rather than doing so mother would leave him with relatives without planning for his supervision.

Mario Macias, a DCFS social worker, visited the household and spoke with relatives. He observed E.Z. to be happy, healthy, normal in his physical development, and "high energy," and found no concerns with the home itself even though it was small—two bedrooms—and housed nine people. The maternal grandmother (MGM) and a maternal aunt claimed that mother often left the child with them without their consent and without

telling them where she was going. MGM reported she was seeking legal guardianship of E.Z.'s 10-year-old brother.

Over the next couple months Macias spoke with several maternal relatives and E.Z.'s medical provider. MGM stated: "[M]other 'continues to leave [E.Z.] here while she leaves the home. I cannot care for him.' Mother's sister stated: '[M]other goes out and leaves the [two] children in our care without telling us anything. Both children are autistic. Mother does not do anything for the children. It all falls on my mother . . . . [M]other is aggressive and has mental problems, she has pushed me before. They . . . don't want to leave.'" When asked whether the aunt had ever seen mother under the influence of drugs, she stated, "Yes, but I don't know what type of drugs. I have called the police a lot of times when mother is verbally aggressive. . . . Here at home there is a lot of yelling by mother to my mom and us at times." Mother's adult son, who sometimes lived in the household, reported that mother and MGM frequently got into "big verbal fights," each videotaping the other. MGM obtained a restraining order against mother and the adult son about a month after the referral.

E.Z.'s medical provider reported there were no medical concerns with the child, although he had been seen for mouth soreness approximately a year and a half earlier, and prescribed antibiotics, and was overdue for a physical examination.

At some point during the investigation mother moved into a hotel with E.Z. and the adult son and his father, and thereafter ceased cooperating with Macias. She refused to return phone calls, take voluntary drug tests, reveal her new address, or make E.Z. available for observation.

Macias concluded that mother's conduct constituted "[c]aretaker incapacity and general neglect," as evidenced by MGM's and the aunt's reports that she "left the children in the home without making a plan for them," as well as mother's "history of substance abuse" and her refusal to submit to drug testing or provide her and E.Z.'s current whereabouts. Macias recommended that E.Z. be removed from mother but that no action be taken regarding his 10-year-old brother because MGM had been granted temporary legal guardianship of him and was seeking permanent guardianship.

DCFS removed E.Z. from mother, placed him in a foster home, and filed a Welfare and Institutions Code section 300<sup>1</sup> petition alleging E.Z. was a child described by subdivision (b)(1) due to mother's "failure to make an appropriate plan for the child's care."

E.Z.'s removal caused family members to resent DCFS, and when social workers re-interviewed them in preparation for the jurisdiction hearing they recanted their prior statements. In their consentient retelling mother transformed from a rude, neglectful parent to a paragon of virtuous motherhood. Where before MGM had reported she was unable to care for E.Z., and mother left him with relatives without their consent and with no plan for his supervision, she now claimed mother not only had their consent but was a loving and caring parent. MGM helped mother care for E.Z., whom mother never left unattended. The maternal aunt now denied mother had left E.Z. with herself and MGM without consent, and reported that she loved her children;

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<sup>1</sup> Undesignated statutory references will be to the Welfare and Institutions Code.

and other relatives stated that mother never left the child alone and they had no concerns about neglect.

Personnel at E.Z.'s elementary school reported that although he had been diagnosed as autistic he was high functioning, and since moving out with mother was doing "much better than usual." An assistant principal reported that she got the impression mother was not 100 percent committed to being a parent, and stated that mother and MGM could "both be very emotional and irrational."

At the jurisdiction/disposition hearing, the court stated it disbelieved the maternal family's change of heart about mother's parenting and found—without explanation—that E.Z. was described by subdivision (b) of section 300. Proceeding to disposition, the court found—again with no explanation—that there was "a substantial danger if the child were returned home to his physical health, safety and protection and . . . well-being." The court ordered that mother attend parenting classes and individual counseling, and submit to drug tests if DCFS suspected her of drug abuse.

Mother appealed.

## **DISCUSSION**

Mother contends no substantial evidence supports the juvenile court's jurisdictional finding because nothing suggests E.Z. has suffered or is at risk of suffering serious physical harm as a result of mother's conduct. We agree.

A child is subject to the juvenile court's jurisdiction under section 300, subdivision (b)(1) if the court finds by a preponderance of the evidence that "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of

his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent . . . to provide the child with adequate food, clothing, shelter, or medical treatment . . . ." (§ 300, subd. (b)(1).)

A jurisdictional finding under section 300, subdivision (b) requires: " '(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) "serious physical harm or illness" to the child, or a "substantial risk" of such harm or illness.' " (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396, abrogated on another ground by *In re R.T.* (2017) 3 Cal.5th 622.) The third element "effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future." (*Savannah M.*, at p. 1396.)

"When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] In making this determination, all conflicts are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.] In dependency proceedings, a trial 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.) "While substantial evidence may consist of inferences, such inferences must be 'a product of logic and reason' and 'must rest on the evidence' [citation]; inferences that are the result of mere speculation or conjecture cannot support a finding." (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.) "The ultimate test is whether it is reasonable for a trier

of fact to make the ruling in question in light of the whole record.’ ” (*In re Savannah M.*, *supra*, 131 Cal.App.4th at p. 1394.)

Here, no evidence suggests E.Z. suffered actual harm as a consequence of mother’s behavior. On the contrary, the social worker found he lived in a clean and appropriately furnished home supplied with food and other necessities, and had support from mother’s extended family. He was loved, well-cared for, happy in the home, and doing well in school. It is true that mother left the child with her relatives without their consent, but DCFS made no showing that her relatives were unable or unwilling—when put to it—to care for him. Although the family did not like it, they worked together to manage the situation successfully.

“[T]he circumstances under which the juvenile court is authorized to take jurisdiction of a child are narrowly defined.” (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134.) In our view, the evidence before the court did not justify its intervention because E.Z. was not injured and the extended family took steps to care for him. Nor is there any reason to believe that the family will be unable to safely handle future problems. MGM may not like having E.Z. thrust upon her, but by all lights she rises to the occasion when he is. Thus, the juvenile court erred in asserting jurisdiction over E.Z., and its jurisdictional finding must be reversed. In light of this determination, the dispositional orders are moot. (*Id.* at p. 1137.)

**DISPOSITION**

The orders are reversed. The juvenile court is ordered to enter an order dismissing the dependency petition.

NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

WEINGART, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.