

Filed 5/23/17 In re Haley G. CA2/1

**NOT TO BE PUBLISHED IN THE OFFICIAL  
REPORTS**

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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA**

**SECOND APPELLATE DISTRICT**

**DIVISION ONE**

In re HALEY G., a Person Coming  
Under the Juvenile Court Law.

---

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

HARLEY G.,

Defendant and Appellant.

---

B277543  
(Los Angeles County  
Super. Ct. No. DK16660)

APPEAL from an order of the Superior Court of Los Angeles County, Julie Fox Blackshaw, Judge. Affirmed.

Terence M. Chucas, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Jeanette Cauble, Principal Deputy County Counsel, for Plaintiff and Respondent.

---

Police officers found Haley G. (Haley), a two-year-old child, alone on a busy street, near a steep beach cliff, at midnight. Officers also located K.R. (Mother), who was intoxicated and had ingested methamphetamine. The Los Angeles County Department of Children and Family Services (DCFS) subsequently filed a Welfare and Institutions Code section 300 petition based on Mother's substance abuse.<sup>1</sup> DCFS later added an allegation that marijuana use by Harley G. (Father) prevented him from regularly caring for Haley. Mother has not appealed the juvenile court's jurisdictional finding. Father also does not challenge the court's finding regarding Mother. However, Father contends that the court's finding regarding his marijuana use was not supported by substantial evidence. He also challenges the court's order that his visits with Haley be monitored.

We affirm.

---

<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

## **BACKGROUND**

On April 20, 2016, DCFS received a referral alleging caretaker absence and general neglect. The clinical social worker (CSW) went to the Long Beach Police Station and interviewed Officer Herrera (Herrera), who stated that Haley was in protective custody. Herrera said Mother had been arrested and charged with being drunk in public as well as child cruelty. Herrera said Mother also had an outstanding warrant for her arrest.

Herrera said that he responded to a radio call around midnight regarding a child that had been left alone. When Herrera arrived, he saw Haley, “alone near a busy street, the beach and a steep cliff.” Officer Larrieu (Larrieu) patrolled the beach looking for the child’s parent. Larrieu found Mother about 200 yards away, drinking from a Jack Daniels bottle and “highly intoxicated.” Mother refused to take a Breathalyzer test. Herrera located an adult male friend of Mother, who was sitting in a car and covered in vomit. The man said he had driven Mother to a drug house in Downey where she had purchased crystal methamphetamine. When Mother returned to the car, she started smoking the drug.

Mother was not at the police station when the CSW spoke with the officers. She had already been transported to another location. The CSW did not interview two-year-old Haley because she “could not make a meaningful statement.” The CSW did not observe any marks or bruises on Haley’s extremities. She was dirty but appeared healthy. The CSW

transported Haley to a clinic where she was medically examined and cleared to be placed into foster care.

Two days later, the CSW was able to telephonically interview Mother, who was still in custody. Mother identified Haley's biological father as Harley G. Mother said she had neither seen nor had any contact with Father for about a year and his whereabouts were unknown. Mother reluctantly provided the CSW with her own street address. Mother said a maternal cousin would be able to care for Haley and provided the cousin's phone number. The CSW called the number several times but no one responded. DCFS categorized the family as being "at high risk for future abuse against Haley" and recommended "continued detention and placement of Haley [was] necessary to protect the child's safety."

On April 25, 2016, CSW Chao interviewed Father. Father said he and Mother began dating when he was 19 and had remained together for about four and a half years. Father said he left Mother at the end of February 2016. Father said he did not have a substance abuse issue or a criminal record and that he wanted to get custody of Haley as soon as possible. He said he currently rented a room and was about to start a new job at Rite Aid. Father said he was ready to take Haley if the juvenile court released her to him. He also said the maternal grandmother was willing to take his daughter in.

That same day, DCFS filed a section 300 petition on Haley's behalf. The one-count petition alleged that Mother

was “a current abuser of methamphetamine and alcohol, which render[ed] the mother unable to provide regular care and supervision of the child.” The petition noted Mother’s arrest while under the influence of alcohol and illicit drugs while Haley was in Mother’s care and supervision. “The child is of such a young age requiring constant care and supervision,” the petition noted, “and the mother’s substance abuse interferes with providing regular care and supervision of the child.” In short, the petition alleged Mother’s substance abuse “endangers the child’s physical health and safety and places the child at risk of serious physical harm and damage.” Father was not named in the petition as an offending parent.

On April 26, 2016, the juvenile court continued the detention order. DCFS was to assess Haley’s maternal grandmother for placement. Both parents’ visits were ordered to be monitored with DCFS to investigate unmonitored visits for Father. The matter was set for an adjudication hearing.

On May 5, 2016, DCFS conducted an assessment of the maternal grandmother’s home. At this time, DCFS was not able to release Haley to the maternal grandmother’s care because a check of her boyfriend’s fingerprints was still pending and a criminal history search revealed two convictions that required a criminal waiver. DCFS also determined it would be premature to allow Father unmonitored visits with Haley. DCFS expressed concern over Father “not knowing how to care for the child, not

having any transportation, [F]ather not being able to take anyone to his home and [F]ather reporting to CSW Chao that he is diagnosed with ADHD.” DCFS also noted that during a monitored visit the week before, Father and Haley did not interact at all. According to Haley’s foster mother, “Father was just sitting and smiling throughout the visit and [the maternal grandmother] was the one that was interacting with the child through the visit.” The foster mother said that Father would benefit from parenting classes as it appeared that Father did not know how to care for the child on his own.

On May 11, 2016, the juvenile court ordered that Father was to have three monitored visits, followed by short unmonitored day visits.

On June 2, 2016, CSW Chao interviewed Father again. Father said that he was currently working at a welding company that might become permanent. He also said he wanted Haley to be returned to Mother because he believed she was a good mother. Father also reported that he had a medical marijuana card to help with “pain in his body” that rendered him unable to concentrate. He further reported that he was able to “function well” when he smoked marijuana. During the interview, CSW Chao observed that Father slurred his speech and seemed unable to concentrate at times.

According to the maternal grandmother’s boyfriend, when Father had monitored visits with Haley his speech slurred, he seemed unable to concentrate at times, and he

appeared only marginally functioning. As a result, the boyfriend suspected Father was under the influence of an unspecified substance when visiting Haley. The boyfriend said he would be concerned for Haley's safety if the child were to have unmonitored visits with Father. Haley's foster mother reported that Father did not show any interest in his daughter during the visits she monitored.

Because Haley "is of young age that she requires much of [F]ather's attention and care," DCFS recommended that Father continue to have monitored visits with Haley and complete a substance abuse program with random drug testing.

On June 7, 2016, DCFS filed a first amended section 300 petition. The first count in the petition, which addressed Mother's conduct (count b-1) remained unchanged. The petition added an allegation (count b-2) that Father was "a current user of marijuana, which render[ed] the father incapable of providing regular care for the child." "The child is of such young age requiring constant care and supervision and the father's marijuana use interferes with the father providing regular care and supervision of the child," the petition alleged. "Said illicit drug use by the father endangers the child's physical health and safety and places the child at risk of serious physical harm and damage." The juvenile court ordered that Father's visits with Haley be monitored.

DCFS filed its Jurisdiction/Disposition Report on June 28, 2016. DCFS reported that Mother had been placed

on three years' summary probation by the criminal court, ordered to serve 35 days in jail, and also ordered to complete a 52-week parenting class. Father had no criminal or child welfare history. With respect to the allegations in the petition, Mother said she had used methamphetamine six months earlier. She denied using drugs with father and said he did not know she used drugs. She denied having a drug or alcohol problem. When asked who she could count on in a crisis, she said, "No one. Friends I guess. [Father], he helps me."

Father did not make himself available for an interview for this report. However, the report noted, when previously assessed for unmonitored visits, Father said that his current living arrangement was not appropriate for Haley. (He rented a bedroom and was not allowed to have anyone else live with him or visit him in the home.) Father said he visited Haley once a week, taking her out to eat or to the park for about three hours. Father also reported that he was not working at the time and had not had a stable job for a while. He denied having any substance abuse issues.

DCFS interviewed Haley's maternal grandmother. She said Mother and Father had been separated for a little over a year and that she believed Father was a good father to Haley. Although she knew Father would pick up Haley for visits, she did not know how often this took place. The maternal grandmother's boyfriend expressed concern and told DCFS to ask Father for a drug test. In its last minute



information for the court report, DCFS stated that Haley had now been placed in the maternal grandmother's home.

The adjudication hearing took place on June 28, 2016. Father testified at the hearing. He admitted he currently used marijuana and said he had a valid medical marijuana card. He said he used marijuana because he had attention deficient hyperactivity disorder (ADHD) and a condition he called "reverse trauma," which he defined as bad memories, and sleeping problems. He denied using marijuana every day. He said he had tried using Adderall and Trazodone, but one drug "hyped" him up and the other made him too drowsy. He also claimed that the drugs made him hallucinate, so he stopped using them when he was 17 years old.

Father recalled the last time he had used marijuana was three days ago. Father said he had started using marijuana when he was 17 years old and was now 23. Father reported he used marijuana two or three times a week to help him sleep. He also used it in the morning to help him focus. He said he smoked less of the drug than was prescribed for him and kept it locked up in a container. Father denied he was ever under the influence when visiting Haley. When asked if he would commit to staying sober for two days before his visits with Haley, he said he would do his best.

Father denied slurring his speech, but recognized it might occur when he was tired or talking too fast. He admitted he had problems concentrating due to his ADHD,

saying he would “easily fall off track, fall off focus.” Father said he had not sought medical treatment for his ADHD since he was 17 years old and admitted he had been self-medicating with marijuana since then. Father also admitted he had to use a higher potency of marijuana because he had started using marijuana so early. He also said he had twice attempted to stay sober for six to eight months, but experienced insomnia and started using marijuana again.

Father testified he did not want Haley to be with him in the house where he currently lived, but said that when he obtained a legitimate house in three to six months, he wanted to take her home. He was comfortable with Haley staying with the maternal grandmother. Father admitted Haley had never really been in his care, but said that he had stayed in the family home for about a year after Haley’s birth. Although he and Mother then split up, he would still drop by, bringing clothes, formula and diapers when Mother called him. Father said that when Mother’s roommate moved out, he moved back in with Mother, Haley and the maternal grandmother and stayed with them for about three to six months. Mother’s brother helped Father watch Haley while Mother and the maternal grandmother were at work.

Father said he never had an unsupervised visit with Haley other than a visit at Easter. Father then began describing how Haley had “getting along with new faces” and did not know how to react. The juvenile court interrupted, telling Father he should not offer further information beyond that asked in the question. Father subsequently stated that

Haley had never spent the night with him. Father also said Haley needed special attention because she had his ADHD and required him to “keep-an-eye-on-her attention,” but maintained he could care for her even though he used marijuana. He did admit that he had gotten sidetracked, watching television, when he and Mother’s brother were caring for Haley.

The attorneys argued the case once Father ended his testimony. Father’s attorney argued there was no evidence Father abused marijuana but said that if the juvenile court made Father a nonoffending parent, he would not ask for placement of Haley. Father’s attorney asked for unmonitored visits, but said that if the court were inclined to order monitored visits, he would submit on that. Haley’s attorney argued that DCFS had met its burden as to both counts in the petition. With respect to Father’s ability to care for Haley, her attorney noted Father’s demeanor while testifying. Given Father’s lack of concentration, jumping around, and “almost hyperactivity,” counsel believed these issues rose to the level of substantial risk. She argued that whether or not Father was under the influence, he was unable to care for Haley.

The juvenile court sustained count b-1, regarding Mother’s substance abuse, as pleaded. As to count b-2, the court sustained the allegation as follows: “b-2: The child, Haley G[.]’s father, Harley G[.], is a current user of marijuana, which renders the father incapable of providing

regular care for the child.<sup>2</sup> The child is of such young age requiring constant care and supervision and the father's marijuana use interferes with the father providing regular care and supervision of the child. Said illicit drug use by the father endangers the child's physical health and safety and places the child at risk of serious physical harm and damage."

The juvenile court noted that while it was "intrigued by [Father's] very careful research and assessment of precisely the amounts of marijuana that he needs to treat the problems that he stated . . . it's really . . . not my job to determine the medical efficacy or the appropriateness of the marijuana for medical use." Rather, the court stated, "[m]y job is make sure that Haley is safe in the father's care while he's using, whether or not it's prescribed or not." Yet Father admitted Haley would not be safe in his care and said he could not commit to being sober when Haley was in his care. The court also noted it had heard a great deal of testimony about how Father's life "really doesn't work well without the marijuana." The court did not believe Father would be able to maintain sobriety. Addressing Father, the court stated: "Haley is a young child. As you said, she is special needs given that she has ADHD. You, yourself, agree that you need to be sober as a parent to care for her. And I don't believe that that is a true possibility for you to do."

---

<sup>2</sup> The court crossed out the next line: "On prior occasions, the father was under the influence of marijuana while the child was in the father's care and supervision."

The court found there was substantial danger to Haley if placed with the parents and there were no reasonable means to protect her in their custody. Haley was declared a dependent of the court. She was ordered removed from the parents' custody and suitably placed. The court ordered monitored visits for both parents, but wanted the social worker to be aware that Father slurred his words even when he was sober.

The court ordered Father participate in six consecutive drug tests. The court did not believe Father needed to discontinue his use of marijuana altogether, but said the levels should remain static. If Father's marijuana consumption increased or if he tested positive for any other drug, DCFS could bring the matter back for further orders. The court ordered Father not to use marijuana two days before each visit with Haley.

## **DISCUSSION**

### **I. Jurisdictional Findings**

#### **A. *Introduction***

Father does not dispute the allegation that Mother's substance abuse issues placed Haley at risk of harm. Father further concedes that the juvenile court assumes jurisdiction over the child, not the parents, and that jurisdiction may be based on the conduct of one parent only. Nevertheless, he argues, the juvenile court's jurisdictional findings as to Father carried serious consequences. But for the court's findings, Father would have been deemed a nonoffending parent rather than an offending parent. Because the court's

findings “may have far-reaching implications with respect to future dependency proceedings in this case and father’s parental rights,” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 763), Father contends we have discretion to review the court’s findings.

“When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.) However, Father is correct that we may also exercise our discretion to reach the merits of a challenge to any jurisdictional finding when the finding may be prejudicial to the appellant. (*In re D.C.* (2011) 195 Cal.App.4th 1010, 1015.) Because the finding that Father’s illicit drug use endangers Haley’s physical health and safety and places the child at risk of serious physical harm may be used against Father in future dependency proceedings, we reach the merits of his appeal.

### **B. *Standard of Review***

The use of marijuana without more is not sufficient to establish jurisdiction over the child. (*In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003.) However, “[t]he provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child.” (§ 300.2.) Thus, section 300, subdivision (b), creates

juvenile court jurisdiction where it is shown that a 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 to adequately supervise or protect the child or by the inability of the parent to provide regular care for the child due to the parent's substance abuse.

We will affirm the juvenile court's jurisdictional findings if they are supported by substantial evidence. (*In re James C.* (2002) 104 Cal.App.4th 470, 482.) "In reviewing the jurisdictional findings . . . , we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, 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 Heather A.* (1996) 52 Cal.App.4th 183, 193.) The appellant has the burden of demonstrating the lack of substantial evidence. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

### **C. Merits**

According to Father, the record does not demonstrate that he had a substance abuse problem as defined by the Diagnostic and Statistical Manual for Mental Disorders (DSM-IV). Father also notes the juvenile court never expressly found he was a substance abuser and that no

medical professional diagnosed him as having a substance abuse problem.

A finding of substance abuse for purposes of section 300, subdivision (b), must be based on evidence sufficient to show that the parent had been diagnosed as having a current substance abuse problem by a medical professional; or establish that the parent has a current substance abuse problem as defined in the DSM–IV. (*In re Drake M.*, *supra*, 211 Cal.App.4th at p. 766.)

The full definition of “substance abuse” found in the DSM–IV describes the condition as “ ‘[a] maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12–month period: [¶]

- (1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; neglect of children or household); [¶]
- (2) recurrent substance use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by substance use); [¶]
- (3) recurrent substance-related legal problems (e.g., arrests for substance-related disorderly conduct); and [¶]
- (4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance (e.g., arguments



with spouse about consequences of intoxication, physical fights).” (*In re Drake M.*, *supra*, 211 Cal.App.4th at p. 766.)

As the juvenile court noted, given Haley’s young age as well as her own special needs, Father needed to be sober as a parent in order to care for the child. Neither the court nor Father believed he could achieve this goal. Thus, the court found, Father’s marijuana use interfered with his ability to provide regular care and supervision of Haley and endangered her health and safety.

*In re Drake M.*, *supra*, 211 Cal.App.4th 754 held the evidence was insufficient to establish that the father’s use of prescribed medical marijuana to treat his chronic knee pain constituted “substance abuse” under the DSM-IV definition. In so concluding, Division Three of our court, relied on undisputed evidence showing that the father had been employed for many years, had no criminal history, and did not operate a motor vehicle or care for the child within a minimum of four hours after ingesting marijuana. (*Id.* at pp. 767–768.) In contrast with *In re Drake M.*, substantial evidence in this case supports the juvenile court’s finding that Father is a substance abuser. Indeed, the evidence suggests one of the most salient manifestations of parental substance abuse is present here—Father’s drug use has resulted in a failure to fulfill major role obligations at home (e.g., neglect of children or household). (See *id.* at p. 766.)

Here, Father used marijuana since he was a teenager. He used the drug in the morning and at night two or three times a week. Indeed, he appeared to be highly dependent

on marijuana to treat his ADHD, “reverse trauma” and sleeping problems. He described two occasions in which he tried to go without using marijuana, but said he was unable to sleep and had to return to using the drug. Father, who was 23 at the time of the hearing, admitted he had not sought any other medical treatment for his conditions since he was 17 years old. He also admitted he currently had to use a higher potency of marijuana because he had started using the drug so early in life. When asked if he would commit to not using marijuana two days before visits with Haley, all he could say was that he would do his best.

Haley was two years old at the time of the hearing—a child of tender years. When a child is under six years of age, a finding of parental substance abuse provides prima facie evidence of that parent’s inability to provide regular care for the child resulting in a substantial risk of harm. (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1385; *In re Drake M., supra*, 211 Cal.App.4th at p. 767.) The evidence presented during the hearing only bolstered this conclusion. Father said Haley was a special needs child who required close attention. However, Father admitted he still got easily sidetracked and fell “off focus.” Taken together, the court could reasonably conclude based on this evidence that Father’s abuse of marijuana contributed to his failure to adequately care for Haley. (See *In re Natalie A.* (2015) 243 Cal.App.4th 178, 186.)

## II. Monitored Visits

### A. *Introduction*

Father next contends that the juvenile court erred when it ordered that his visitation with Haley be monitored by the maternal grandmother. Although the record reflects that Father was not engaged with Haley during his monitored visits, Father argues that these observations are not trustworthy. Father also posits that there may have been many reasons why he was not engaged with Haley during these visits. Thus, he argues, the juvenile court's findings and orders must be reversed.

### B. *Standard of Review*<sup>3</sup>

An order setting visitation terms is reviewed for abuse of discretion. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067; *In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757.) An abuse of discretion occurs when the lower court “ “ “ “has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination.” ’ ’ ’ ’ (*In re Tamneisha S.* (1997) 58 Cal.App.4th 798, 806.)

---

<sup>3</sup> Father contends we should review the court's order under the substantial evidence standard. There is some disagreement regarding the appropriate standard of review—some courts have applied the abuse of discretion test instead while others have used a blended standard—but we need not resolve the issue because under any standard, we find the order was proper. (See *In re T.M.* (2016) 4 Cal.App.5th 1214, 1219.)

### C. *Merits*

Section 362.1 provides for visitation “[i]n order to maintain ties between the parent or guardian and any siblings and the child.” (§ 362.1, subd. (a).) Visitation should be “as frequent as possible, consistent with the well-being of the child.” (§ 362.1, subd. (a)(1)(A).) “While visitation is a key element of reunification, the court must focus on the best interests of the children ‘and on the elimination of conditions which led to the juvenile court’s finding that the child has suffered, or is at risk of suffering, harm specified in section 300.’ ” (*In re Julie M.* (1999) 69 Cal.App.4th 41, 50.) Visitation may always be curtailed if the court finds it is not in the child’s best interest and no visitation order shall jeopardize the child’s safety. (§ 362.1, subd. (a)(1)(B); *In re Daniel C.H.* (1990) 220 Cal.App.3d 814, 838–839.)

At the outset, Father claims he had frequent and continuing unmonitored visits with Haley. Yet Father testified contradictorily that he had never been left alone with Haley other than on Easter. Furthermore, the same concerns highlighted by the court when sustaining the petition are equally applicable here. At best, Father was disengaged during his visits with Haley. At worst, his substance abuse prevented him from being able to safely care for the child. Although Father contends that observations by Haley’s foster mother and maternal grandmother’s boyfriend should be discounted, issues of credibility are the province of the trial court. (*In re*

*Heather A., supra*, 52 Cal.App.4th at p. 193.) Haley, two years old and with special needs, required a caregiver that was sober and able to keep her out of harm's way. The court's determination that monitored visits would serve Haley's best interest was not arbitrary, capricious or patently absurd. Moreover, as discussed above, the court's findings regarding Father's limitations were supported by substantial evidence.

**DISPOSITION**

The order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.