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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re A.C. et al., Persons Coming
Under the Juvenile Court Law.

B270905
(Los Angeles County
Super. Ct. No. DK13834)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.C.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.
Natalie Stone, Judge. Affirmed.

Lori N. Siegel, under appointment by the Court of Appeal, for
Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County
Counsel, Jessica S. Mitchell, Deputy County Counsel, for Defendant and
Appellant.

Johanna C. (Mother) appeals from the juvenile court's 2016 findings establishing jurisdiction and from its dispositional orders removing her children A.C. (born in May 2013) and J.C. (born in September 2014) from Mother's custody and from custody of A.C. (Father), and ordering Mother to complete a drug rehabilitation program.¹ We affirm.

FACUAL AND PROCEDURAL HISTORY

Mother has a prior contact with the Los Angeles County Department of Children and Family Services (DCFS). In that matter, on the date of J.C.'s birth in 2014, DCFS was informed that Mother had neglected J.C. as Mother had a positive toxicology test report at the time of J.C.'s delivery. At the time of that report to DCFS, the results of the baby's toxicology report were not yet known. The reporting party also advised that Mother had not obtained prenatal care and suffered from post-traumatic stress disorder (PTSD). In the following month, shortly after the family had moved to Riverside County, that county's Child Protective Services received a similar report. The referral was deemed substantiated.²

In the present matter, on October 9, 2015, DCFS received an "immediate response referral" which alleged that both Mother and Father were severely neglecting and physically and emotionally abusing A.C. and J.C. The report included allegations that Mother had disclosed to the reporting party that, on October 8, 2015, Father had driven while intoxicated with the children in his vehicle. The next day, when Father tried to leave the family home and again drive while intoxicated, Mother tried to stop him. In

¹ Father did not appeal from similar orders.

² The record in this court does not include any other information concerning the 2014 referral.

response, he put Mother in a headlock, strangled her, and pushed her down, all in the presence of the children. Father then took the car keys and left. Mother sustained visible scratches to her shoulder, upper chest abrasions, and a two-inch cut to her knee. When interviewed, Mother stated that she and Father pushed each other around when they argued. Mother stated that October 8th was not the first time Father had driven the children in a vehicle while intoxicated. It was also reported that Mother had stated she would recant her statements once she found out that the police were going to contact DCFS.

A social worker from DCFS and Los Angeles police officers went to the family residence on October 9th following the report of that incident. Father was not present. In the interview of Mother, she stated that she had kicked Father out of the house and had called the police so that police would talk with Father and provide him with some help. She believed he was now living with a former pastor, but she did not have contact information for either. She declined a police officer's suggestion of an emergency protective order. She also declined the social worker's advice that she obtain such an order based on Father's reported history of driving the children while intoxicated and as he had choked and scratched Mother and done so in the presence of the children.

Mother also told the social worker she began smoking marijuana at age 16. She stated she had been diagnosed with PTSD following her incarceration for robbery at age 18 and resumed smoking on her release. She denied smoking marijuana while pregnant with J.C., but admitted to ingesting "edibles," which she said she did to relieve back and leg pain, ingesting or smoking mostly at night. She stated she had a "recommendation" for the marijuana. When she smoked, she stated she did

not smoke around the children or while they were awake, and did so outside their home.

During this visit to the home, the social worker observed that A.C.'s feet were dirty and black on the bottom and that he was wearing a stained white polo shirt. J.C. was appropriately dressed, and could both sit up and crawl. There were no visible bruises on either child.

In performing a walk-thru of the family home that day, the social worker observed that the family home was a garage which had been converted into a single room. The parents shared a bed, A.C. had a bed, and J.C. had a crib. The room did not have a bathroom, stove or refrigerator. Mother stated they were allowed to use the bathroom in the main house, and they cooked their meals in the converted garage.

The police report documented scratches on Mother's upper chest, and a two-inch contusion on her left knee. Photographs were taken of these injuries. Mother declined medical attention from the ambulance workers who had been called to the home.

DCFS detained the children from the parents on October 9, 2015. DCFS assessed that the children were at risk due to Mother's admission that she was aware that Father drove with the children in his vehicle while he was intoxicated, Father perpetrated domestic violence on Mother, did so in the presence of the infants, and that Mother declined an emergency protective order.

On October 11, 2015, Father called the social worker and told her he had been sober on October 8th and 9th. He admitted he had been drinking earlier on the 8th, but said he had had a meal and four hours had passed between the time of his last drink and when he drove with the children in his car. He stated he was sober even though Mother thought he had been

intoxicated. He admitted pushing Mother, but said it was because he was late for work. He denied any prior physical violence with Mother. Father stated he smoked marijuana to help him sleep at night, but would stop if asked. He said he would do whatever was necessary to have his children returned to the home.

On October 15, 2015, the social worker took the children for monitored visits with the parents. Both parents interacted appropriately with the children, appeared to demonstrate that they could remain civil toward each other, and focused their attention on their children.

The parents have criminal histories. Mother was convicted of second degree robbery in 2009 and was sentenced to Juvenile Hall. Later the same year, Mother was convicted of theft from a vehicle and assault with a deadly weapon and was sentenced to a term of 15 years.

After several juvenile proceedings, in 2009, Father was convicted of grand theft and sentenced to 60 days in jail and 24 months of probation.

On October 15, 2015, DCFS filed a Welfare and Institutions Code section 300³ petition (Petition) in which it alleged that the children were at risk due to Mother and Father's history of engaging in violent altercations in the children's presence, Father placing Mother in a headlock, choking her and pushing her to the ground, causing her to sustain abrasions. The Petition also alleged that Mother failed to protect the children from Father by allowing Father to reside in the children's home, allowing the children to ride in a vehicle with Father knowing he was intoxicated, and as Mother was a current abuser of drugs. The Petition further alleged Father failed to protect

³ All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

the children from Mother's substance abuse, particularly as it affected her ability to care for and protect these young children.

Also on this date, the court made detention findings against the parents, ordering the children detained in shelter care. The court ordered DCFS to provide referrals to the parents for domestic violence classes and drug and alcohol testing. The parents were allowed weekly, monitored visits with the children.

When the dependency investigator interviewed Mother on a later date, Mother recanted her earlier statements regarding Father's prior acts of domestic violence, claiming that, on October 9, 2015, she had been angry with him, he had not hit her, claimed she had fallen, and he had not grabbed her until after she spit on him. Regarding her use of marijuana, she admitted she began when she was 16, and again smoked after she "got out." She denied smoking during her pregnancy with J.C., but admitting ingesting edibles then. She now smoked, but never near the children and only did so to relieve her back and leg pain. She said she would do whatever was necessary to reunify with the children.

As of November 25, 2015, Father had not responded to multiple efforts by the dependency investigator to schedule an interview.

DCFS assessed that the children were unable to be returned safely to Mother and Father due to the parents' unresolved history of domestic violence, the Father's intoxication while driving with the children, and Mother's substance abuse. DCFS observed that the parents had demonstrated an inability to resolve their relationship conflicts without violence, Father had minimized Mother's account of the October 9, 2015 domestic violence incident, and Mother minimized the same incident by denying it had occurred. DCFS recommended that the juvenile court sustain

the Petition and order family reunification services and monitored visits for the parents.

The Last Minute Information of December 4, 2015, reported that Mother and Father had each tested positive for marijuana on November 24, 2015. The court continued the adjudication hearing from December 4, 2015 to February 3, 2016.

On January 26, 2016, DCFS reported that it had learned Father had been arrested and charged in connection with a December 17, 2015 burglary and was in custody. By this date, Mother had enrolled in domestic violence counseling. Drug testing reports for tests of November 11, November 25, December 17, 2015, and January 16, 2016, all indicated that Mother continued to test positive for marijuana.

On February 3, 2016, DCFS interviewed Father in custody prior to the jurisdiction and disposition hearings. He admitted having been arrested for burglary. He also admitted he had pushed Mother and caused her to fall on October 9th, stating he did this after she told him she wanted him to take the bus to work rather than drive. He denied their argument had been much more than verbal and denied prior physical altercations with Mother.

Later that day, the juvenile court conducted a contested jurisdictional hearing. Mother appeared with counsel. Father appeared in custody, also represented by counsel. The court stated it had received a waiver of rights form from Father. Father pleaded no contest to an amended version of the Petition. The court admitted DCFS reports into evidence with the exception of statements initially made by the reporting party, stating those statements would not be an exclusive basis for asserting jurisdiction. (§ 355, subd. (c)(1).)

After argument, DCFS asked that the court sustain the domestic violence allegations of count b-2⁴ of the Petition and Mother's substance abuse allegations contained in count b-3.⁵ With respect to count b-2, DCFS argued that Father had pled no contest, Mother had stated initially that the October 9th altercation was not the first time she and Father had engaged in physical altercations, Mother's statements in the report were very graphic as to the violence Father had perpetrated upon her, and Mother had later recanted, demonstrating that she minimized the parents' domestic violence.

⁴ Count b-2, after amendment on the date of the hearings alleged: "The children [A.C.] and [J.C.'s] mother, [J.C.], and the [Father], have engaged in violent altercations in the presence of the children. On 10/9/15, the father pushed the mother on the ground. On prior occasions, the parents have pushed one another. The mother failed to protect the children in that the mother allowed the father to reside in the children's home and have unlimited access to the children. The violent conduct by the father against the mother, and the mother's failure to protect the children, endangers the children's physical health and safety, creates a detrimental home environment, and places the children at risk of serious physical harm, damage, danger and failure to protect."

⁵ Count b-3, which was not amended, alleged: "The children [A.C.] and [J.C.'s] mother, [J.C.], is a current abuser of marijuana, which renders the mother incapable of providing regular care and supervision of the children, On 9/8/14 and prior occasions, the mother was under the influence of marijuana while the children was [sic] in the mother's care and supervision. The children's father, [A.C.], knew or reasonably should have known of the mother's substance abuse, and failed to protect the children in that the father allowed the mother to reside in the children's home and have unlimited access to the children. The children are of such a young age requiring constant care and supervision and the mother's substance abuse interferes with providing regular care and supervision of the children. The mother's substance abuse and the father's failure to protect, endangers the children's physical health and safety and places the children at risk of serious physical harm, damage, and failure to protect."

DCFS also argued that Mother's history of marijuana use, beginning at age 16, continued currently even though the children were quite young and required full-time supervision. It pointed out that Mother had failed to show up for many drug tests and when she did, she tested positive for marijuana, all of which indicated she was an active user.

Mother's request that she be dismissed was denied. The court stated in sustaining count b-2 that it was not convinced that the October 9th incident was a "one-time incident." The court also referenced Mother's refusal to obtain an emergency protective order against Father, and that she had recanted her prior description of the events she had reported to the police and the social worker on the earlier visit.

The court also sustained count b-3, noting the very young age of the children, there was evidence Mother had used marijuana while pregnant as well as after, and the levels of marijuana revealed on the tests she had submitted to all indicated ongoing abuse rather than just medical use.

After determining that there was jurisdiction, the court proceeded to disposition. Mother signed the case plan without any comment.

The court found by clear and convincing evidence under section 361, subdivision (c) that there was substantial danger to the children's health and well-being if they were returned home, and ordered them removed from Mother and Father and placed immediately with the maternal grandparents. In making these orders the court noted there was clear and convincing risk of domestic violence, also remarking on "Mother's use of marijuana given the young ages of the children."

The court ordered family reunification services, that Mother complete a full drug and alcohol program and test weekly, and that she participate in a domestic violence group. The court also ordered unmonitored visits for

Mother in the maternal grandparents' home and gave DCFS discretion to permit Mother to move into that home if Mother complied with the case plan and was testing negative for drugs. Mother's counsel made no objections to any of the orders.

Mother filed a timely notice of appeal.

CONTENTIONS

Mother contends this court should exercise its discretion to reach the merits of Mother's jurisdictional challenge and, after doing so, determine that substantial evidence does not support jurisdiction under section 300, subdivision (b)(2) or section 300, subdivision (b)(3). Mother also contends that substantial evidence does not support the disposition findings and orders.

DISCUSSION

I. Substantial evidence supports the juvenile court's jurisdictional finding as to Mother's challenge

Mother begins her argument as to the juvenile court's jurisdictional determinations by recognizing that a jurisdictional finding "good against one parent is good against both," citing *In re Brianna V.* (2015) 236 Cal.App.4th 297, 308 (*Brianna V.*). She then argues that we should exercise our discretion to reach the merits of her jurisdictional challenge "as it pertains to Mother's conduct, because the jurisdictional findings affect the outcome of the [trial] court's dispositional orders, including the removal of the children from Mother's custody [and ordering her to complete a drug rehabilitation program], which Mother challenges in this appeal."

The source of Mother's contention and of the holding of *Brianna V.*, *supra*, is section 355, which makes clear that the focus of a jurisdictional finding is "whether the *minor* is a person described by Section 300. Any

legally admissible evidence that is relevant to the circumstances or acts that are alleged to bring the *minor* within the jurisdiction of the juvenile court is admissible Proof by a preponderance of evidence must be adduced to support a finding that the *minor* is a person described by Section 300.” (§ 355, subd. (a), italics added.)

Mother makes these arguments as predicates to her contention that the trial court erred in determining that she had failed to protect the children as alleged in the amended Petition. If that is so, she continues, then as a “non-offending parent,” both the removal order and the dispositional orders made as to her would be placed in question. In making this argument she relies on *In re Drake M.* (2012) 211 Cal.App.4th 754. There, Division Three of this court determined that there was no substantial evidence to support that trial court’s finding that the father was an offending parent, and consequentially, the orders made there constituted an abuse of discretion with respect to the non-offending parent. (*In re Drake M.*, at p. 763 et seq.) (Such a determination does not void the jurisdictional finding against the other parent, particularly when that parent has not appealed. (*Brianna V.*, *supra*, 236 Cal.App.4th at p. 308.)

Mother’s difficulty in this case, however, is that substantial evidence supports the juvenile court’s determination that she was an offending parent.

“We review the juvenile court’s jurisdictional findings for sufficiency of the evidence. [Citations.] We review the record to determine whether there is any substantial evidence to support the juvenile court’s conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court’s orders, if possible. [Citation.] “However, substantial evidence is not synonymous with any evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal.

[Citation.] Furthermore, ‘[w]hile 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* [citations].’ [Citation.] ‘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.’ [Citation.]” [Citation.]’ (*In re David M.* (2005) 134 Cal.App.4th 822, 828.)” (*In re Drake M., supra*, 211 Cal.App.4th at p. 763.)

a. Count b-2—violent conduct of parents toward each other

Count b-2 of the Petition sets out the circumstances of the parents’ altercation on October 9th, references prior altercations, and alleges that Mother failed to protect the children by allowing Father to continue to reside in the family home and have unlimited access to the children notwithstanding his violent conduct against the Mother in the presence of the children. The Petition further alleges that Mother’s failure to protect the children “endangers the children’s physical health and safety, creates a detrimental home environment, and places the children at risk of serious physical harm, damage, danger and failure to protect.”

DCFS points out that there does not have to be actual harm before the juvenile court may find jurisdiction (*In re Eric B.* (1987) 189 Cal.App.3d 996, 1002-1003), that a current risk of future harm is an appropriate basis for a jurisdictional finding, and that such a risk can be shown if there is reason to believe the conduct alleged will recur. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393-1394.) Further, in reviewing the sufficiency of the evidence to support the juvenile court’s finding or order, we determine whether the record as a whole contains any substantial evidence to support the trial court’s conclusions. (*Ibid.*)

The record contains ample evidence in support of the Petition's allegation that Mother failed to protect the children from what the trial court determined to be one of several violent confrontations between the parents. The police report documented Mother's description of the altercation with Father on the same day it occurred. She reported the headlock, the choking, Father throwing her to the ground, as well as her scratches, bruising and the visible injury to her knee. The conduct occurred in the presence and proximity of the children in the close quarters of the single room/converted garage which the family occupied. Mother refused an emergency protective order. The situation was exacerbated by Mother recanting when she was interviewed the next month by the dependency department investigator. That she did so suggests an unwillingness by Mother to protect the children from the parents' violent behaviors toward each other. Her denial is itself relevant in the determination of whether she is likely to modify her behavior. (*In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044.)

The very young ages of the children are also relevant to the jurisdictional, as well as the dispositional, determinations. (*In re Rocco M.* (1991) 1 Cal.Ap.4th 814, 824.) Both common sense and expert opinion indicate that spousal abuse is detrimental to children. (*In re Benjamin D.* (1991) 227 Cal.App.3d 1464, 1470, fn. 5; see *In re Sylvia R.* (1997) 55 Cal.App.4th 559, 562.) Based on our review of the record, including the facts summarized above, there was substantial evidence to support the juvenile court's jurisdictional finding in this case as to Mother. Mother's contrary claim, lacks merit.

b. Count b-3—use or abuse of marijuana

Count b-3 alleged in part that Mother was a current abuser of marijuana, which rendered her “incapable of providing regular care and

supervision of the children. On September 8, 2014, and [on] prior occasions, the mother was under the influence of marijuana while the children was [sic] in the mother's care The children are of such a young age requiring constant care and supervision and the mother's substance abuse interferes with providing regular care and supervision of the children. The mother's substance abuse . . . endangers the children's physical health and safety and places the children at risk of serious physical harm, damage, and failure to protect."

There was substantial evidence to support these findings; thus, Mother's challenge is without merit.

That a parent with a substance abuse problem can pose a threat to a child was specifically recognized by the Legislature in enacting section 300.2. That section provides in pertinent part: "The 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. Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment."

Case law instructs us that a finding of substance abuse for purposes of section 300, subdivision (b) may be based on continued use of a drug "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, quoting DSM-IV-TR, at p. 199.)⁶ Further, when

⁶ The initials DSM-IV stand for the 4th Edition of the Diagnostic and Statistical Manual of Mental Disorders, a manual published by the American Psychiatric Association. The manual includes currently recognized mental health disorders and is used by health care professionals in diagnosing, inter

children are “of such tender years that the absence of adequate supervision and care poses an inherent risk to their physical health and safety” a trial court may properly determine that the substance abuse presents a substantial physical danger to the young children. (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824.) A child under three years of age is one example of a child of “tender years.” (See *In re Jeffrey P.* (1990) 218 Cal.App.3d 1548.)

Mother seeks to minimize the impact of her long-term use of marijuana on her ability to care for two infants by emphasizing her use of marijuana “edibles.” However, earlier in her contacts with DCFS she admitted that she both smoked and ingested marijuana. Also, there is no evidence in the record that ingesting marijuana presents any less of a challenge to properly caring for two infants than smoking it. There was no dispute concerning the positive toxicology finding on the day Mother gave birth to J.C. Mother also did not seek to present any evidence that she had a prescription for use; she claimed only that it had been “recommended” for her back and leg pain. Nor did she present any evidence of the frequency or severity of those pains. Rather, the evidence is undisputed that Mother has consistently used marijuana since the age of 16—except while incarcerated—and continued to use it both while pregnant with J.C., and after, including after the children were detained from her and Father. Her continued use of marijuana in the time period when there is heightened scrutiny upon her conduct to determine the actions DCFS will take and recommend to the juvenile court, is documented by positive results on the four occasions she did test between the time of the children’s detention and the date of the jurisdiction and disposition hearing. Mother also failed to test on four other occasions in this

alia, substance abuse disorders. (See e.g. *In re Drake*, *supra*, 211 Cal.App.4th at p. 766.)

time period. We note that a missed drug test is “properly considered the equivalent of a positive test.” (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1217 (*Christopher R.*)) Her continued use under these circumstances is further evidence of addiction rather than use only for pain management.

In *Christopher R.*, *supra*, the court found that the mother’s use of a drug during pregnancy and her admission to past use, combined with her failure to consistently comply with the order to drug test and to enroll in a drug abuse program constituted substantial evidence to support the trial court’s determination that her substance abuse endangered the health and safety of her children. (*Christopher R.*, *supra*, 225 Cal.App.4th at pp. 1217-1218.) Here, Mother’s claim that she only smoked and ate edibles away from the children, if accurate, indicates that she left them unsupervised while she did so. By itself, this conduct suggest risk of physical harm to the children while Mother is absent. Moreover, Mother’s long-term use of marijuana was part of a long-term problem. As the trial court noted, “[T]he fact that mother was using [marijuana] while pregnant, to me, suggests an abuse of marijuana.” And, Mother did not deny continuing to use marijuana. The record fully supports the conclusion that there is substantial evidence to support the trial court’s conclusion that Mother’s conduct constituted a potential failure to protect the infants in the future as well as at present.

II. The removal order

Mother challenges the dispositional order removing the children from her care.

Once a juvenile court finds that a child is subject to its jurisdiction, the court determines an appropriate disposition. “At the dispositional hearing, the court must decide where the child will live while under the court’s supervision.’ (*In re N.M.* (2011) 197 Cal.App.4th 159, 169.) ‘A removal order

is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] “The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.” [Citation.] The court may consider a parent’s past conduct as well as present circumstances.’ (*Id.* at pp. 169-170.)” (*In re A.S.* (2011) 202 Cal.App.4th 237, 247.)

Section 361, subdivision (c)(1) provides that the juvenile court may remove the child from the parent’s physical custody when it finds by clear and convincing evidence that there is a substantial danger to the physical health, safety, protection or emotional well-being of the child or would be if the child is returned to the parental home, and there are no reasonable means to protect the child without removal from the parent’s physical custody.

We review such orders for substantial evidence. “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 providence of the trial court. [Citation omitted.]” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

Mother argues there were reasonable means to protect the children short of removing them from her custody, citing *In re Ashly F.* (2014) 225 Cal.App.4th 803. Mother also acknowledges that a parent’s past conduct may be considered as a good predictor of future behavior, citing *In re Cole C.* (2009) 174 Cal.App.4th 900, 917 and *In re T.V.* (2013) 217 Cal.App.4th 126, 133. Yet, these cases actually support affirmance of the juvenile court’s order in the present case: The prior violent altercations between the parents in the

presence of the infants and Mother's long-term use of marijuana and refusal to alter her behavior even when pregnant, as well as Mother's recanting her report to the police of domestic abuse, all support the juvenile court's decision to remove the infants from Mother's custody. Based on Mother's history and recent conduct, no lesser alternative would have sufficed.⁷ (Cf. *In re Jeannette S.* (1979) 94 Cal.App.3d 52, 60 [reversing order removing child from home where less severe alternatives existed].) What stands out in this case is the history of long-term drug use, and denials even in the face of photographs of abuse. As DCFS argues, a "parent's current understanding of and attitude toward the past conduct that endangered a child" is relevant when the juvenile court evaluates risk. (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1025-1026.) And, as DCFS also points out, there is no appropriate father in the home to assume the role of parent and caretaker as there was in *In re Ashly F.*, *supra*, 225 Cal.App.4th at p. 810.)

III. The order that Mother complete a drug rehabilitation program

Mother argues that the court erred in ordering her to complete a drug rehabilitation program. DCFS contends that Mother waived any objection by failing to object below. Mother replies that she only uses marijuana to treat her pain, and that a challenge to the court's treatment order would have been futile.

Assuming, *arguendo* that it was not waived by Mother's conduct in consenting below to her case plan, the primary concern to the dependency court was the best interests of the children. Further, that court had broad discretion to make orders which were designed to ameliorate the conditions that made the children dependents of the court. (*In re Neil D.* (2007) 155

⁷ The court did allow unmonitored visits in the maternal grandparents' home, and gave discretion to DCFS to allow Mother to move into that home if she is complying with her case plan.

Cal.App.4th 219, 224.) We review such orders for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

The evidence is clear that Mother's marijuana usage continued through the date of the jurisdiction/disposition hearing notwithstanding removal of the children from the family home. Mother's conduct, in addition to the circumstances that Mother has smoked and/or ingested marijuana prior to, during pregnancy, and since, confirm the propriety of the court order that she participate in a drug rehabilitation program. There was no abuse of discretion in the order now challenged.

DISPOSITION

The judgment of the dependency court is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.*

GOODMAN

We concur:

_____, Acting P.J.

ASHMANN-GERST

_____, J.

CHAVEZ

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