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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re I.V., a Person Coming Under  
the Juvenile Court Law.

B283447  
(Los Angeles County  
Super. Ct. No. DK18100)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

Y.S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Joshua D. Wayser, Judge. Affirmed in part, reversed in part and remanded with directions.

John P. McCurley, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,  
Assistant County Counsel, and William D. Thetford, Deputy  
County Counsel, for Plaintiff and Respondent.

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In this dependency case (Welf. & Inst. Code, § 300 et seq.),<sup>1</sup> Y.S. (Mother) appeals from the dispositional order, challenging the sufficiency of the evidence supporting the removal of her then five-year-old son I.V. from her custody after the juvenile court sustained a supplemental dependency petition under section 387. We agree with Mother that the removal order is not supported by substantial evidence. Accordingly, we reverse this portion of the disposition order.

## **BACKGROUND**

### **First Detention<sup>2</sup>**

In April 2016, the Los Angeles County Department of Children and Family Services (DCFS) received a hotline referral, alleging (1) Mother physically abused four-year-old I.V. (a couple of times a week the reporting party heard I.V. crying and screaming, “No don’t hit me mom”), (2) Mother used drugs (snorted a white substance) and drank “almost daily to the point of being drunk,” (3) Mother and her boyfriend<sup>3</sup> engaged in verbal

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

<sup>2</sup> The following facts are set forth in the June 24, 2016 Detention Report.

<sup>3</sup> The man described above as Mother’s boyfriend is not I.V.’s father. W.V. is I.V.’s father. W.V. is not a party to this appeal.

and physical altercations, and (4) Mother's boyfriend used drugs and appeared to sell drugs out of the home he shared with Mother and I.V.

The day after DCFS received the referral, sheriff's deputies responded to the home and interviewed Mother, her boyfriend, and I.V. Mother denied the allegations of physical abuse and neglect, stating she disciplined I.V. by spanking him on the buttocks with an open hand. The deputies did not observe signs of abuse or neglect. I.V. wore clean clothes, appeared healthy, and the deputies did not observe any bruises. Mother and her boyfriend denied they used drugs or abused alcohol, but admitted occasional alcohol use. Mother's boyfriend denied he sold drugs. Mother and her boyfriend admitted they engaged in verbal altercations, but denied the altercations became physical. I.V. denied Mother and her boyfriend spanked him, hit each other, or used drugs. The deputies found no evidence of a crime.

A week after the deputies visited Mother, a DCFS social worker attempted to contact Mother in-person at her home and by letter, but did not reach her.

In early June 2016, a social worker contacted a medical center where I.V. was a patient and had been seen three months before. An employee there told the social worker "she did not have any concerns in regards to the allegations of child abuse or neglect." Later in the month, the social worker contacted a Head Start program where I.V. attended preschool. A staff member there stated he knew I.V. "very well" and had never observed evidence of abuse or neglect.

On June 9, 2016, about five weeks after the social worker left a letter and business card at Mother's home, Mother contacted DCFS and scheduled an in-home interview for the

following day. In denying the allegations, Mother told the two social workers who came to her home the same things she previously told the sheriff's deputies (as summarized above). Mother allowed the social workers to examine I.V.'s body, and they did not observe any marks or bruises. One of the social workers "noted that I[V.] was very talkative and interactive for a 4 year old child." I.V. denied the allegations of abuse and neglect (as he did when interviewed by the deputies). He indicated Mother disciplined him by hitting him on the buttocks with an open hand.

Because Mother had a 2013 arrest for possession of a controlled substance with intent to sell, the social workers asked if she would take a drug test. She agreed. The social workers interviewed Mother's boyfriend. He denied the allegations made against him in the referral, but declined the request that he take a drug test.

Three days after the DCFS interview, Mother submitted to a drug screen and tested positive for amphetamine and methamphetamine.<sup>4</sup> When confronted with the results, Mother denied taking methamphetamine. She told a social worker she had taken Tylenol and a cramp medication "she was unable to name." Mother refused a referral to a recovery program, stating she did not know why the result was positive.

On June 16, 2016, a social worker interviewed I.V.'s maternal grandmother. She stated she did not have any concerns about domestic violence or substance abuse by Mother or

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<sup>4</sup> The normal screen cut-off level for methamphetamine is 1000 ng/ml, and Mother's positive result was listed as 23560 ng/ml.

Mother's boyfriend. The maternal grandmother babysat I.V. when Mother went out, and the child was currently at her home.

On June 17, 2016, two social workers interviewed W.V. (Father).<sup>5</sup> He stated he had not seen I.V. since December 2015, and was not in contact with Mother. According to Father, he and Mother met in a rehabilitation facility, but he did not know the substance she was using at that time. Father was in the facility for methamphetamine use.<sup>6</sup> During their relationship, he never saw Mother use drugs. He "was surprised by the allegations" against her. When he last saw I.V. six months before, he had no concerns about abuse or neglect. He once observed a large bruise on I.V.'s back, but could not remember when he saw it and did not know how the child sustained it. He did not know how Mother disciplined I.V. and was not aware of domestic violence between Mother and her boyfriend.

Father told the social workers about a domestic violence incident that occurred between him and Mother in Utah in 2012 (four years before this interview), when I.V. was 10 months old. Father went to jail as a result of the incident, and his romantic relationship with Mother ended at that time.

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<sup>5</sup> Because Father is not a party to this appeal, we do not set forth a summary of the entire interview, but only the statements that relate to the allegations against Mother.

<sup>6</sup> Father denied current methamphetamine use, but later contacted one of the social workers and admitted he had relapsed two months before this interview, "due to his current diagnosed depression."

On June 21, 2016, DCFS obtained a court order, authorizing the agency to detain I.V. from Mother and Father. On June 23, 2016, DCFS placed I.V. in foster care.

### **Section 300 (Original) Petition**

On June 27, 2016, DCFS filed a dependency petition under section 300, subdivisions (a) and (b), alleging I.V. was at risk of harm due to (1) the 2012 incident of domestic violence between Mother and Father (referenced above) and earlier incidents of domestic violence between them (counts a-1 & b-4), (2) Mother's history of substance abuse and recent positive toxicology screen for amphetamine and methamphetamine (count b-1), (3) Father's history of substance abuse (count b-2), and (4) Father's mental and emotional problems and recent psychiatric hospitalization (count b-3).

At the June 28, 2016 detention hearing, Mother appeared and denied the allegations. The juvenile court found a prima facie case for detaining I.V. from Mother and Father and ordered the child placed in foster care. The court granted DCFS discretion to place I.V. with an appropriate relative or to release him to Mother if she produced five consecutive clean random drug tests. The court also ordered monitored visitation for Mother to occur three times per week.

### **Multidisciplinary Assessment Team Report**

In a DCFS Multidisciplinary Assessment Team (MAT) report prepared in August 2016, the assessor noted I.V. was a smart, talkative, affectionate five-year-old boy. The family service worker at I.V.'s preschool told the assessor I.V. "had a good relationship with his peers" and was "a happy kid." The assessor observed a visit between Mother and I.V. and noted "they appear[ed] to share a good bond with each other."

The assessor stated in the report that I.V. “would not talk about his trauma” and “when asked about his mother he would shut down.” According to the assessor, Mother “appear[ed] to have a volatile mood,” as she arrived for a visit “crying and with sad affect.” Although the assessor acknowledged I.V. “appeared to be happy to see his mother and didn’t appear troubled by mother’s affect and mood,” the assessor opined Mother’s volatile mood “may affect I.V.] and induce some of [the] anxious behavior” he displayed in his foster home (e.g., expressing fears and worries, difficulty sleeping, and hiding from adults coming to speak with him about the allegations). Mother denied any drug use when the assessor questioned her.

This was I.V.’s first detention and placement, and the assessor reported I.V. was exhibiting some aggressive behavior in his foster home. He was defiant with his caregiver (refusing to follow directions), and aggressive with the other children in the home (not sharing his toys and taking their food). The caregiver informed the assessor that Mother encouraged this behavior, telling I.V. he did not have to listen to the caregiver or share his toys. On the other hand, the assessor noted that I.V. sought affection from his caregiver and worked with his caregiver to learn to brush his teeth and dress/undress on his own.

### **Jurisdiction/Disposition—Original Petition**

#### **August 24, 2016 Jurisdiction/Disposition Report**

The dependency investigator was unable to interview Mother, Father and I.V. in preparation of the August 24, 2016 Jurisdiction/Disposition Report. Mother canceled the interview scheduled for August 2 and did not reschedule prior to the investigator’s preparation of the report.

According to this jurisdiction/disposition report, the MAT assessor informed a DCFS social worker that she visited Mother's home in August 2016 and found it to be "filthy" and suspected Mother and her boyfriend were under the influence of drugs, commenting that Mother "[s]eemed a little off." The MAT assessor did not include this information in her report (discussed above).

DCFS reported that Mother's visitation had been inconsistent. Initially visits occurred at a local McDonald's restaurant, monitored by I.V.'s caregiver. Then the caregiver requested that the visits be moved because she felt unsafe. Mother brought her boyfriend to the visits, and he reportedly "was verbally aggressive" toward the caregiver. DCFS attempted to accommodate Mother by moving the visits to a DCFS office, but then Mother "missed several visits." Mother blamed DCFS for the missed visits, although she did not respond to the social worker's calls, voice mail messages, and texts about the visits.

On August 12, 2016, I.V.'s caregiver asked DCFS to remove him from the foster home due to the behavior described in the MAT assessor's report (as set forth above).

On August 24, 2016, the juvenile court continued the adjudication hearing at Mother's request.

### **September 20, 2016 Interim Review Report**

As set forth in the September 20, 2016 Interim Review Report, the dependency investigator interviewed Mother on August 25, 2016. Regarding her positive drug screen, Mother stated she agreed to test because she was not using and was sure the result would be negative. She did not know why the result was positive. She noted that she took Midol to alleviate



menstrual symptoms and Nyquil to help her sleep. She recalled taking Nyquil the night before the drug screen.

The social worker informed the investigator that Mother was “hostile with him and refuse[d] to engage in any services.” He made an unannounced visit to her home because she did not respond to his phone calls, but she would not allow him to enter. He observed that the yard was “dirty and messy,” which she blamed on a neighbor. She called him to complain about the distance to her visits and then became angry and hung up on him as he tried to respond. Mother submitted to random drug screens on July 13, July 27 and August 1, 2016 and tested negative, but missed two other tests.

I.V.’s new foster mother reported that mother seldom called to inquire about I.V., and Mother did not interact with the foster father when he monitored her visits. Mother missed three visits since I.V. was placed in the home the month before, once citing car trouble and the other two times failing to call to confirm the visits. The foster father reported that Mother “interact[ed] well” with I.V. during visits. On one occasion, Mother brought a man (who was not identified in the report) to the visit, and the social worker later reminded her that she could not bring anyone who was not approved by DCFS. Mother refused to sign the documentation the social worker reviewed with her, which outlined the visitation schedule and rules. Mother stated her attorney told her not to sign any documents.

On September 20, 2016, the juvenile court continued the adjudication hearing to allow Mother to submit to another drug screen. The court ordered DCFS to assist Mother in obtaining a

temporary identification card so she could test<sup>7</sup> and to provide her with a visitation schedule and transportation assistance for visits.

**October 4, 2016 Last Minute Information for the Court**

On October 4, 2016, the day of the continued adjudication/disposition hearing, DCFS submitted a last minute information for the court, explaining its efforts to assist Mother in obtaining a temporary identification card, transportation funds, and a visitation schedule.

On September 21, 2016, a social worker called Mother to inform her that her temporary identification card and bus tokens were available. Mother refused to go to the office to retrieve them and declined the social worker's offer to deliver them to her. Two days later, a supervising social worker went to Mother's home to give her the items. Mother came to the door, refused to speak to the supervising social worker, and walked back inside without accepting the identification card or tokens.

On September 27, 2016, the social worker called Mother to inform her she was scheduled for a drug screen the following day and needed to pick up her temporary identification card. Mother agreed to retrieve the card from the DCFS office, and she did.<sup>8</sup>

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<sup>7</sup> The record reflects Mother appeared for a drug screen on September 1, 2016, but could not test because she did not have proper identification.

<sup>8</sup> Mother submitted to the drug screen on September 28, 2016 and tested negative. At the time it prepared this last minute information for the court, DCFS had not received the results.

Mother inquired about the bus tokens, and the social worker explained he returned them to the finance department because she did not claim them within the allotted time. The social worker planned to request a bus pass for Mother.

DCFS reiterated in this last minute information for the court that its employees met with Mother on multiple occasions to review the visitation schedule. On each occasion, Mother refused to sign the document acknowledging receipt of the schedule.

DCFS recommended the juvenile court remove I.V. from Mother's and Father's custody, noting the child was thriving in his new placement.

#### **October 4, 2016 adjudication/disposition hearing**

At the adjudication hearing, Mother's and I.V.'s counsel urged the juvenile court not to assume jurisdiction, arguing there was no nexus between Mother's one positive drug screen and a risk of harm to I.V. The juvenile court received into evidence photographs introduced by Mother, demonstrating her home was tidy and clean.

The juvenile court dismissed the allegations about Mother and Father's history of domestic violence (counts a-1 & b-4), finding the allegations were stale. The court sustained count b-1 against Mother, as amended as follows: "The child I[V.]'s mother, Y[S.], has a history of substance abuse and recently tested positive for amphetamines and methamphetamines, which puts the child at risk of harm. On 06/13/2016, the mother had a positive toxicology screen for amphetamines and methamphetamines. On prior occasions, the mother used and was under the influence of illicit substances while the child was in the mother's care and supervision. The child is of such young

age requiring constant care and supervision and the mother's substance abuse interferes with providing regular care and supervision of the child. Such substance abuse by the mother endangers the child's physical health and safety and places the child at risk of serious physical harm and damage." The court also sustained the allegations regarding Father's history of substance abuse (count b-2) and Father's mental and emotional problems (count b-3).<sup>9</sup>

Regarding disposition, I.V.'s counsel recommended the juvenile court release the child to Mother on the condition she submit to random drug tests and make her home available to DCFS for inspection and unannounced visits. Over DCFS's objection, the court followed this recommendation. The court declared I.V. a dependent of the court, placed him with Mother, and ordered her to submit to five random drug tests and make her home available to DCFS during unannounced visits. The court also ordered Mother to participate in family preservation services, including a parenting program and individual counseling, and ordered transportation assistance for her. The court urged Mother to cooperate with DCFS. As set forth in the case plan, if Mother had a missed or positive drug test, she would be required to enroll in a full drug rehabilitation program with random testing.

### **Second Detention**

Five months after the adjudication/disposition hearing, on March 10, 2017, DCFS sought and obtained a court order, authorizing the agency to detain I.V. from Mother. In its

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<sup>9</sup> Father was not participating in the case. He was not in contact with DCFS and had not appeared in court.

application, DCFS cited Mother's refusal to participate in family preservation services (resulting in her termination from the program) and her failure to submit proof of enrollment in a parenting program or individual counseling. DCFS also cited Mother's failure to submit to five random drug tests since the October 4, 2016 adjudication/disposition hearing. Mother tested negative on November 3, 2016, but missed six scheduled tests between October 14, 2016 and January 18, 2017. On other occasions, when the social worker contacted her and asked her to submit to a test, Mother stated she was unavailable.

DCFS also stated in its application for a removal order that Mother was not maintaining "constant contact" with the agency and had refused to allow the social worker to speak privately with I.V. Mother declined referrals for mental health services for I.V. and also declined to participate in a team meeting. According to the social worker, Mother declared, "I decide what happens with my child, not the Court."

On March 16, 2017, DCFS served Mother with the removal order, detained I.V., and placed him in foster care.

### **Section 387 (Supplemental) Petition**

On March 21, 2017, DCFS filed a supplemental dependency petition under section 387, alleging "The child I[V.]'s mother, Y[S.], has a history of substance abuse, and is a current user of methamphetamine and amphetamine, which renders the mother incapable of providing regular care and supervision of the child. On 6/13/16, the mother had a positive toxicology screen for methamphetamine and amphetamine. The child is 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 child. The child is a current dependent of

the Juvenile Court due to the mother's substance abuse. The mother has failed to comply with Juvenile Court ordered Family Preservation, Random Drug Testing, and Individual Counseling. The mother's substance abuse and failure to comply with Court orders, endangers the child's physical health and safety, and places the child at risk of serious physical harm and damage."

Mother appeared at the March 21, 2017 detention hearing and denied the allegations. The juvenile court found a prima facie case for detaining I.V. from Mother and ordered the child placed in foster care. The court granted DCFS discretion to release him to Mother.

#### **Jurisdiction/Disposition—Supplemental Petition**

##### **March 28, 2017 Status Review Report**

As stated in the March 28, 2017 Status Review Report, during the time I.V. lived with Mother and her boyfriend, the child "continue[d] to thrive" and "no concerns [were] noted or reported." He appeared comfortable in Mother's home. These assessments were based on the social worker's home visits with Mother and I.V. during the period of supervision (Oct. 5, 2016-Mar. 16, 2017). The social worker noted in the report that Mother would not allow her to speak privately with I.V. during home visits. On December 16, 2016, the social worker went to the school where I.V. attended kindergarten and spoke privately with him there. No concerns were noted. On February 15, 2017, the school reported that I.V. had no behavioral problems.

##### **March 28, 2017 Jurisdiction/Disposition Report**

On March 24, 2017, a social worker interviewed Mother in preparation of the March 28, 2017 Jurisdiction/Disposition Report. As stated in the report, Mother continued to deny methamphetamine use and disputed the June 2016 positive test

result. Mother also disputed the lab reports indicating she failed to appear for on-demand drug screens. She asserted she had proof she appeared and would bring it to the next court hearing.

During the same interview, Mother stated she was aware the court ordered her to participate in family preservation services, and she acknowledged someone from the program contacted her. She claimed she did not understand what family preservation services were and had tried to contact the program to find out more about it. Mother could not explain why she had yet to enroll in these court-ordered services. As to individual counseling, Mother stated she was not aware this was a requirement of her case plan, and she did not recall if DCFS had provided her with referrals for individual counseling.<sup>10</sup> She stated she would participate in family preservation services and individual counseling going forward. Mother informed the social worker that she had completed an online parenting course, and she provided the Web site address. She also explained that it was her understanding at the time of the October 4, 2016 adjudication/disposition hearing that I.V. could remain in her home as long as she tested clean and made him available to DCFS.

On March 24, 2017, the social worker also interviewed I.V.'s maternal grandmother, who stated "she might have some suspicions that mother might be drinking." The maternal grandmother told the social worker she did not know if Mother

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<sup>10</sup> The record includes copies of January 6 and February 17, 2017 letters to Mother, explaining the requirements of her case plan (including individual counseling) and stating that referrals were attached (although the referrals are not included in the record before us).

used drugs, but she knew Mother “use[d] to drink” alcohol. She also stated that she cared for I.V. most weekends, and he did not want to return home after their visits. For these reasons, the maternal grandmother expressed concern about I.V.’s care in Mother’s home.

As also stated in this jurisdiction/disposition report, the foster mother informed DCFS that I.V. had adjusted well to her home. He was sleeping and eating well and not exhibiting any behavioral issues. The foster mother also reported that I.V. and Mother had a positive visit for two and a half hours on March 23, 2017. The foster mother “had no issues, problems or concerns to report.” During the visit, Mother “asked her son how he was doing and asked about his overall well being.” Mother and I.V. hugged, laughed, and played together at the playground in the park.

DCFS recommended the juvenile court sustain the supplemental petition and order I.V. to remain placed in his current foster home.

#### **March 28, 2017 adjudication/disposition hearing**

Mother testified at the March 28, 2017 adjudication/disposition hearing. She reiterated what she told the social worker during her March 24, 2017 interview—that she believed the things she needed to do to keep I.V. in her home were test clean and make him available to DCFS. She understood that the court had ordered her to participate in other services, but she believed the court was focused on the drug tests and DCFS’s access to I.V.

Mother denied ever using methamphetamine or any illegal drug. She admitted to missing some of the scheduled drug tests, but stated her understanding of the requirement was that she



complete five drug tests during the period of supervision. Mother did not provide proof that she appeared for tests that DCFS claimed she missed (as she stated during her March 24, 2017 interview that she would do).

Mother testified that she enrolled in individual counseling on March 28, 2017, the date of this adjudication/disposition hearing. She presented to the juvenile court a letter stating she enrolled in a parenting course on March 16, 2017.

During argument, counsel for I.V. and DCFS urged the juvenile court to sustain the petition and order I.V. to remain placed in foster care, citing Mother's failure to comply with her case plan and refusal to allow the social worker to interview I.V. privately during home visits. Mother's counsel urged the court to dismiss the petition, noting Mother had not produced another positive drug screen and did not understand the court would detain I.V. if she failed to enroll in individual counseling and parenting. Mother's counsel acknowledged she missed several on-demand drug tests.

The juvenile court sustained the supplemental petition and ordered I.V. removed from Mother and to remain placed in foster care. The court also ordered Mother to undergo a section 730 psychological evaluation, "based on the court's review of the file, as well as Mother's testimony today and conduct."<sup>11</sup> The court agreed with comments by DCFS's counsel that Mother appeared to be sabotaging her case. The court also ordered Mother to submit to a hair follicle test and complete a substance abuse program in the event the test was positive.

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<sup>11</sup> The court noted that the record would "not necessarily reflect" its "visual observation of the mother."

## DISCUSSION

Mother challenges the sufficiency of the evidence supporting the portion of the March 28, 2017 dispositional order removing I.V. from her custody.

A juvenile court may take a dependent child from the physical custody of his parent where “[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).)

“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. [Citation.] [¶] Before the court issues a removal order, it must find the child’s welfare requires removal because of a substantial danger, or risk of danger, to the child’s physical health if he or she is returned home, and there are no reasonable alternatives to protect the child. [Citations.] There must be clear and convincing evidence that removal is the only way to protect the child.” (*In re N.M.* (2011) 197 Cal.App.4th 159, 169-170.)

“Whether the conditions in the home present a risk of harm to the child is a factual issue” to which “we apply the substantial evidence test.” (*In re N.M., supra*, 197 Cal.App.4th at p. 170.)

Accordingly, “we review the evidence most favorably to the court’s order—drawing every reasonable inference and resolving all conflicts in favor of the prevailing party—to determine if it is supported by substantial evidence. [Citation.] If it is, we affirm the order even if other evidence supports a contrary conclusion.” (*Id.* at p. 168.)

The March 28, 2017 disposition order is not supported by substantial evidence demonstrating removal from Mother’s custody was necessary to protect I.V. from harm. Between October 4, 2016 and March 16, 2017, I.V. thrived in Mother’s care. When the social worker observed I.V. in Mother’s home, he was free from signs of physical abuse and appeared healthy, well groomed, well adjusted and comfortable. I.V. attended school and had no academic or behavioral problems. Mother always kept up with I.V.’s medical and dental care.

DCFS expressed concern that Mother would not allow the social worker to speak privately with I.V. during home visits. In December 2016, the social worker went to I.V.’s school, interviewed him in private, and noted no concerns.

Mother tested positive for amphetamine/methamphetamine on one occasion before I.V. was detained from her care for the first time in June 2016. Although she did not test positive again, she only submitted to drug screens on five occasions between June 28, 2016 and March 28, 2017 (all of which were negative). Yet despite all of the missed tests, the juvenile court did not order her to enroll in a drug rehabilitation program as it previously told her it would do. Instead, the court ordered a hair follicle test. During the time I.V. was in Mother’s custody from October 4, 2016 to March 16, 2017, no one observed any signs that Mother was under the influence of drugs.

DCFS and the juvenile court understandably were frustrated by Mother's noncompliance with her case plan and failure to cooperate with DCFS. We do not condone Mother's conduct. At the same time, we cannot overlook DCFS's failure to meet its burden of proof for removal (clear and convincing evidence that removal is the only way to protect the child). As explained above, the " 'focus of the statute is on averting harm to the child.' " (*In re N.M.*, *supra*, 197 Cal.App.4th at p. 170.) What is the harm that DCFS was trying to avert? I.V. was thriving and well cared for in Mother's home. Based on the record before us, the only time his behavior deteriorated was after he was detained from Mother and placed in foster care for the first time. The record demonstrates that while I.V. was living with Mother, no harm ever came to him and he never displayed signs of abuse or neglect. Any assertion that I.V. needed protection from Mother at the time of the disposition hearing was based on conjecture, not clear and convincing evidence.

The March 28, 2017 removal order is reversed. We remand the matter for further proceedings consistent with this opinion.

#### **DISPOSITION**

The portion of the March 28, 2017 disposition order removing I.V. from Mother's custody is reversed. In all other respects, the disposition order is affirmed. The matter is remanded for further proceedings consistent with this opinion.

NOT TO BE PUBLISHED.

CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.