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

**SECOND APPELLATE DISTRICT**

**DIVISION ONE**

In re DANIEL D., a Person  
Coming Under the Juvenile Court  
Law.

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LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JUANA C.,

Defendant and Appellant.

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B280440

(Los Angeles County  
Super. Ct. No. DK20065)

APPEAL from an order of the Superior Court of Los Angeles County, Natalie P. Stone, Judge. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Brian Mahler, Deputy County Counsel, for Plaintiff and Respondent.

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## **BACKGROUND**

### **A. Detention Report**

On September 1, 2016, the Los Angeles County Department of Children and Family Services (DCFS) received a referral regarding Juana C. (mother). According to the reporting party, mother lived with her one-year old child, Daniel D. at the maternal grandmother's home and was not adequately caring for Daniel D. According to the reporting party, mother would not bathe, change, or feed the child. Because mother fed Daniel D. only Cheetos and formula, the child had been reduced to eating things he found on the floor. The reporting party also stated that mother was away from home all night while claiming to be at work and that she used methamphetamine and marijuana, both in the past and recently. She was also physically aggressive and easily agitated. As a teenager, mother had been diagnosed with severe depression and placed on psychiatric holds several times following episodes where she harmed herself or threatened to harm herself.

On September 8, 2016, DCFS met with mother. Mother confirmed she had been placed on a psychiatric hold for suicidal ideation when she was 13 or 14 years old but said she had not contemplated suicide since then. Mother denied she left home at night or that she inadequately bathed and fed Daniel D. Mother admitted she currently used marijuana to treat her anxiety but had not used methamphetamine since Daniel D. was born. Mother was drug tested later that day and while she tested positive for cannabinoids, she tested negative for methamphetamine.

On September 20, 2016, DCFS spoke with maternal grandmother by phone. Maternal grandmother said she was very concerned for the safety and well-being of Daniel D. According to maternal grandmother, mother neglected the child by not bathing him when needed, not feeding the child when he is hungry, and made very little effort to care for the child. Maternal grandmother also said mother verbally abused Daniel D. constantly by yelling at the child and calling him foul names. Mother also did not change the child's diaper when needed, leading to severe diaper rashes. According to maternal grandmother, mother "has an aggressive behavior and is easily angry." Maternal grandmother also said that mother had been diagnosed with depression and as bipolar when she was 13 and does not take medication for mental health disorders.

On October 3, 2016, maternal grandmother called DCFS. Maternal grandmother said that mother had left Daniel D. with her two days earlier and had had no contact

with maternal grandmother since then. Mother returned home on the night of October 2nd. According to maternal grandmother, mother slapped Daniel D. on the face because the child had a toy in his mouth. Maternal grandmother called the police because mother became very aggressive with maternal grandmother when she told mother not to hit the child. Mother fled the home before the police arrived. Mother returned to the home the next day but only to pick up clothes for herself. She refused to take the child and said she did not want the child. Maternal grandmother did not know mother's current whereabouts. Maternal grandmother said she would like to get legal guardianship of the child and would take the necessary steps to keep Daniel D. under her supervision. Maternal grandmother said she did not want mother in her home because of her aggressive behavior.

DCFS spoke with mother on the phone later that same day. When asked where she was, mother replied, "I'm somewhere." When asked what her plans were with Daniel D., mother replied, "I don't know." When DCFS asked mother when they could meet to make a plan for the child, mother hung up the phone. DCFS then met with maternal grandmother as well a maternal aunt and maternal uncle. The maternal aunt confirmed that mother "slapped [Daniel D.] hard" for having a toy in his mouth. She said this was the first time she had seen mother hit the child. The maternal uncle said he was not at the home when this took place but that he had seen mother slap the child on the face two or three days earlier.

On October 24, 2016, DCFS obtained a warrant authorizing the removal of Daniel D. from mother's custody. The child was at maternal grandmother's home at the time. Later that same day, DCFS spoke with mother on the phone. Mother was told about the warrant and again refused to disclose her location. DCFS subsequently removed Daniel D. from the home.

**B. Dependency Petition and Detention Hearing**

On October 27, 2016, DCFS filed a petition on behalf of Daniel D. pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b)(1).<sup>1</sup> The petition alleged that mother physically abused Daniel D. when she slapped his face (counts a-1 and b-1); that mother had a history of illicit drug use which placed the child at risk of serious physical harm (count b-2); and that mother had a history of mental and emotional problems which also placed the child at risk of serious physical harm (count b-3). At the detention hearing, the juvenile court found Javier D. (father) to be Daniel D.'s presumed father. The court detained the child from both parents and ordered DCFS to provide reunification services.

On December 15, 2016, DCFS filed a first amended petition on behalf of Daniel D. pursuant to section 300, subdivisions (a), (b)(1), and (g). The amended petition contained the original counts (a-1, b-1, b-2, b-3) as well as

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

two additional counts (b-4 and g-1). As to the counts involving mother (a-1, b-1, b-2, b-3), count b-1 was interlineated to allege that mother inappropriately disciplined Daniel D. instead of physically abusing him. As to the counts involving father (b-4 and g-1), count b-4 alleged that father had a current and past history of substance abuse and had recently tested positive for amphetamines and methamphetamines, which put the child at risk of serious physical harm. Count g-1 alleged that father had not taken steps to involve himself with Daniel D, or the DCFS case, which placed the child at risk of physical and emotional harm and damage.

### **C. Jurisdiction and Disposition Report**

Throughout November and December 2016, DCFS repeatedly tried to contact mother by either calling or texting her last known phone number and by visiting her last known address. Nevertheless, DCFS was unable to make contact with mother during this time. Conversely, mother never initiated contact with DCFS during this time.

On November 14, 2016, DCFS learned that father had been arrested in August 2016. According to the police report, father was a passenger in a car stopped by police for a traffic violation. As the officer pulled father's ID from his wallet, he located a ziploc baggie filled with a crystal rock-like substance resembling methamphetamine in the wallet. Father was then arrested for possession of a controlled substance.

On November 17, 2016, DCFS learned of a domestic violence incident between mother and maternal grandmother in October 2015. According to the police report, maternal grandmother sustained scratches to her right wrist and a small amount of swelling and light bruising under her left eye. Maternal grandmother said mother had grabbed her hair and punched her during an argument. Mother said she had only pushed maternal grandmother. Mother also said she suffers from insomnia and depression but denied any other mental disorders. Maternal grandmother told the police that mother had assaulted her in the past and suffers from mental issues. When her stepfather commented on mother's conduct, police overheard mother respond, " 'So what? I can hit her!' " Mother was then arrested for domestic battery.

**D. Addendum and Last Minute Information**

On December 13, 2016, DCFS interviewed maternal grandmother at home. She again stated that mother had a history of mental health issues and was diagnosed with depression as well as bipolar disorder when she was a teenager. However, maternal grandmother said mother had not been hospitalized recently and had no recent suicide attempts. DCFS also scheduled a meeting with mother. The meeting was supposed to take place on December 15, 2016, but mother failed to appear. She later texted DCFS and said she had taken the wrong bus. The meeting was rescheduled for December 19, 2016. Mother failed to appear at this meeting as well and did not subsequently contact DCFS. On

December 27, 2016, father met with DCFS and agreed to undergo a drug test later that day. He tested positive for both amphetamines and methamphetamines.

**E. Jurisdiction and Disposition Hearing**

On January 5, 2017, the juvenile court held a combined jurisdiction and disposition hearing. The court sustained count b-1 (as amended by interlineation), count b-2, and count b-4 (as amended by interlineation). Mother and father pled no contest to these counts. The court then granted DCFS's request to strike count a-1 and g-1 from the amended petition. The sustained counts read as follows:

Count b-1: "On 10/2/16, and on a prior occasion, the child, Daniel [D.]'s mother, Juana [C.], inappropriately physically disciplined the child by slapping the child's face. Such inappropriate discipline was excessive and caused the child unreasonable pain and suffering. The mother's inappropriate discipline towards the child endangers the child's physical health and safety and places the child at risk of serious physical harm [and] damage."

Count b-2: "The child, Daniel [D.]'s mother, Juana [C.], has a history of illicit drug use, including methamphetamine, and is a current user of marijuana, which renders the mother incapable for providing regular care of the child. On 9/9/16, the mother had a positive toxicology screen for marijuana. On 9/9/16, the mother was under the influence of marijuana while the child was in the mother's care and supervision. On prior occasions, mother used, possessed, and was under the influence of marijuana



while the child was in the mother's care and supervision. The child is of such a young age as to require constant care and supervision, and the mother's drug use interferes with providing regular care and supervision of the child. The mother's substance abuse . . . endangers the children's physical health and safety and places the children at risk of serious physical harm and damage."

Count b-4: "The child Daniel [D.]'s father, Javier [D.], has current and past history of substance abuse, including marijuana and methamphetamine. On December 27, 2016, father tested positive for amphetamines and methamphetamines. The child is of such a young age as to require constant care and supervision, and the father's drug use interferes with providing regular care and supervision of the child. The father's substance abuse . . . endangers the child's physical health and safety and places the children at risk of serious physical harm."

The court then held a contested hearing on count b-3. The court admitted DCFS's detention report, jurisdiction and disposition report, addendum report, and last minute information report. However, the court refused to admit or rely upon two documents from an earlier case in which mother was the subject child—a section 241.1 report from June 8, 2011, and a status review report from December 16, 2013. The two excluded documents were attached to the jurisdiction and disposition report and contained information that mother had suffered from mental and emotional

problems when she was a child. Following argument, the juvenile court sustained count b-3, which read as follows:

Count b-3: “The child, Daniel [D.]’s mother, Juana [C.] has a history of mental and emotional problems, including . . . diagnos[e]s of Bipolar disorder and depression, depression and suicidal ideations. Such mental and emotional condition[s] on the part of the mother endangers the child’s physical health and safety and places the child at risk of serious physical harm and damage.”

When sustaining count b-3, the court said, “I also find this is not a situation where there’s just evidence of mental illness but no nexus to any harm or potential harm to the child. I can only think that it’s because of mother’s mental illness that she would hit a one year old, because I don’t think that is behavior that even drug use could cause. It is just completely irrational. And no person who was not mentally ill, I think, would hit a one year old.”

Moving on to disposition, the court declared Daniel D. to be a dependent of the court, removed the child from both parents, and ordered that DCFS provide reunification services. Both parents were to receive drug and alcohol services, parenting services, individual counseling services, and monitored visitation. Mother was also to receive mental health counsel services, including a psychiatric evaluation and an order to take all prescribed psychotropic medications.

Mother filed a notice of appeal in which she challenged the court’s jurisdictional findings in count b-3. Father is not a party to this appeal.

## DISCUSSION

### A. Justiciability in Dependency Cases

“It is a fundamental principle of appellate practice that an appeal will not be entertained unless it presents a justiciable issue.” (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1489.) “An important requirement for justiciability is the availability of ‘effective’ relief—that is, the prospect of a remedy that can have a practical, tangible impact on the parties’ conduct or legal status.” (*Id.* at p. 1490.) When “issues raised in [an] appeal present no genuine challenge to the court’s assumption of dependency jurisdiction[,] . . . any order we enter will have no practical impact on the pending dependency proceeding, thereby precluding a grant of effective relief. For that reason, we find [such an] appeal to be nonjusticiable.” (*Id.* at p. 1491.)

“‘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 such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.’” (*In re I.J.* (2013) 56 Cal.4th 766, 773; *In re I.A.*, *supra*, 201 Cal.App.4th at p. 1492.)

“[I]t is necessary only for the court to find that one parent’s conduct has created circumstances triggering section 300 for the court to assert jurisdiction over [a] child.

[Citations.] Once the child is found to be endangered in the manner described by one of the subdivisions of section 300—e.g., a risk of serious physical harm (subds. (a) & (b)), serious emotional damage (subd. (c)), sexual or other abuse (subds. (d) & (e)), or abandonment (subd. (g)), among others—the child comes within the court’s jurisdiction, even if the child was not in the physical custody of one or both parents at the time the jurisdictional events occurred.

[Citation.] For jurisdictional purposes, it is irrelevant which parent created those circumstances. A jurisdictional finding involving the conduct of a particular parent is not necessary for the court to enter orders binding on that parent, once dependency jurisdiction has been established. [Citation.] As a result, it is commonly said that a jurisdictional finding involving one parent is ‘ “good against both. More accurately, the minor is a dependent if the actions of either parent bring [him] within one of the statutory definitions of a dependent.” ’ ” (*In re I.A.*, *supra*, 201 Cal.App.4th at pp. 1491–1492.)

## **B. Application**

Mother challenges the juvenile court’s jurisdictional findings as to count b-3 only. Thus, even if we determined that this particular count was not supported by sufficient evidence, the juvenile court would still have jurisdiction over Daniel D. based on the remaining sustained, and unchallenged, counts. Any order we enter here will have no practical impact on the pending dependency proceeding. Consequently, mother’s claim appears to be nonjusticiable.

(See *In re I.A.*, *supra*, 201 Cal.App.4th at p. 1491.) Nevertheless, “we generally will exercise our discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) ‘could have other consequences for [the appellant], beyond jurisdiction.’ ” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763.)

According to mother, DCFS’s “incorporation of archival material for use in the instant case is a concrete example of how past ‘findings’ regarding Mother’s mental health will be a recurring theme in any future proceeding.” Mother also maintains that “[t]he sustained count b-3 findings of mental and emotional problems will come back to haunt Mother should she have another child.” Thus, she argues, the juvenile court’s finding could potentially impact future dependency proceedings. (See *In re Drake M.*, *supra*, 211 Cal.App.4th at p. 762.)

At the outset, we note that the juvenile court neither admitted nor relied upon the 2011 section 241.1 report or the 2013 status review report when it sustained count b-3; rather, the court excluded the material from the evidentiary record. Moreover, a juvenile court “may consider past events in deciding whether a child presently needs the court’s protection.” (*In re N.M.* (2011) 197 Cal.App.4th 159, 165.) A parent’s “ ‘[p]ast conduct may be probative of current

conditions’ if there is reason to believe that the conduct will continue.” (*In re S.O.* (2002) 103 Cal.App.4th 453, 461; accord *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.) This is because “[t]he 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.” (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136 disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

Nevertheless, in general, section 300 requires proof that the child is subject to the defined risk of harm at the time of the jurisdiction hearing. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) “Evidence of past conduct, without more, is insufficient to support a jurisdictional finding under section 300. There must be some reason beyond mere speculation to believe the alleged conduct will recur.” (*In re James R.* (2009) 176 Cal.App.4th 129, 136.) Thus, unless there is reason to believe that mother’s conduct will continue, there is no reason that the juvenile court’s findings should impact future dependency proceedings—especially given that “harm may not be presumed from the mere fact of mental illness of a parent.” (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318.) Consequently, mother’s appeal appears to be nonjusticiable. Furthermore, even if we reach the merits of mother’s claim, the juvenile court’s finding is supported by substantial evidence.

### C. Merits

We review the juvenile court's jurisdiction findings and disposition order for substantial evidence. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 966; *In re R.C.* (2012) 210 Cal.App.4th 930, 940.) Under this standard “[w]e 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.” (*In re David M.* (2005) 134 Cal.App.4th 822, 828; accord *In re Drake M.*, *supra*, 211 Cal.App.4th at p. 763.)

The question here is whether substantial evidence supports the finding that Daniel D. was, at the time of the hearing, a person described in section 300, subdivision (b). “The statutory definition consists of three elements: (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the minor, or a ‘substantial risk’ of such harm or illness.” (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 820.)

Here, substantial evidence supports the juvenile court’s finding that mother’s mental and emotional conditions caused Daniel D. serious physical harm or placed the child at substantial risk of such harm. Mother admitted she suffered from depression when she was arrested for assaulting maternal grandmother. Moreover, maternal grandmother repeatedly informed DCFS that mother had been diagnosed with depression and bipolar disorder, that mother did not

take any medications for her mental health issues, and that mother was physically aggressive with others. These conditions caused Daniel D. to suffer harm (and be at risk of future harm) as evidenced by mother physically slapping Daniel D., repeatedly leaving the child at home, abandoning him without a caretaking plan, and refusing to reveal her whereabouts to DCFS.

Mother points to the juvenile court's post-finding comment that her conduct was "completely irrational" and that "no person who was not mentally ill, I think, would hit a one year old." Mother describes this as "circular reasoning" that revealed the lack of evidentiary support for the charge. We disagree. Mother had been diagnosed with both depression and bipolar disorder and both conditions went, and remained, untreated. There was no other reasonable explanation for her physically violent behavior toward Daniel D., who was young enough that "the absence of adequate supervision and care poses an inherent risk to [his] physical health and safety." (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824.) It was this violent behavior which allowed the juvenile court to conclude that mother's mental health created a substantial risk of serious physical harm in the future. In other words, there was a demonstrable causal link between the *behavior* of the parent—rather than simply the parent's mental illness—and the risk of harm to the child. Because substantial evidence supports the juvenile court's finding that Daniel D. was at substantial risk of physical injury while in mother's care, the court properly



sustained the allegation under section 300, subdivision (b).  
(See *Ibid.*)

**DISPOSITION**

The order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.