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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION THREE

In re CLAYTON M., et al.,  
Persons Coming Under the  
Juvenile Court Law.

B279608

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Los Angeles County  
Super. Ct. No. DK14725

Plaintiff and Respondent,

v.

NATALIE M.,

Defendant and Appellant.

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

Joseph T. Tavano, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,  
Assistant County Counsel, and David Michael Miller, Deputy  
County Counsel, for Plaintiff and Respondent.

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## INTRODUCTION

The juvenile court declared minors Clayton M. (born July 2002) and Brooklyn C. (born March 2011) dependents of the court under Welfare and Institutions Code<sup>1</sup> section 300, subdivision (b), finding that Natalie M. (mother) used inappropriate physical discipline on Clayton, placing him and Brooklyn at risk of serious physical harm. The court ordered Clayton removed from mother's custody and placed in the home of his father, Clayton M. Sr. (Clayton Sr.).<sup>2</sup> On appeal, mother contends insufficient evidence supports the jurisdictional finding and the dispositional order removing Clayton from her custody. We affirm.

## FACTUAL AND PROCEDURAL SUMMARY

### **1. The initiation of the children's dependency proceedings**

In February 2016, the Department of Children and Family Services (Department) filed a dependency petition on behalf of Clayton and Brooklyn, which as amended and found true, alleged the following:

B-1: "On a prior occasion, the children Clayton [M.] and Brooklyn [C.]'s mother, Natalie [M.], inappropriately physically disciplined the child Clayton by kicking him in the back and by pushing the child into a wall. On a prior occasion, the mother pushed the child out of a vehicle. Such inappropriate physical discipline was excessive and caused the child unreasonable pain

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

<sup>2</sup> Clayton and Brooklyn have different fathers. Michael C. is Brooklyn's father. Neither father is a party to this appeal.

and suffering. Such inappropriate physical discipline of the child by the mother endangers the child's physical health, safety and well-being, creates a detrimental home environment and places the child Clayton and the child's sibling, Brooklyn, at risk of serious physical harm, damage, danger and physical abuse.”<sup>3</sup>

## **2. The Department's investigation**

When the Department began investigating the family, Clayton reported that mother had hit him on two occasions in 2015. During one incident, mother pushed Clayton out of her car after he told her that he wanted to live with his father. After mother stopped the car and pushed Clayton out of the car, she told him to walk home. Clayton then walked about one mile to Clayton Sr.'s house.

During the second incident, mother pushed Clayton against a wall during an argument. Clayton told the Department,

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<sup>3</sup> The b-1 allegation originally alleged that mother “physically abused” Clayton. At the jurisdiction hearing, the court, on its own motion, amended the allegation to substitute “inappropriate physical discipline” for “physical abuse.”

The petition also alleged the following grounds for jurisdiction, which were ultimately dismissed: physical abuse of Clayton by mother based on the same conduct supporting the b-1 allegation (§ 300, subds. (a) & (j)); history of domestic violence between mother and her ex-boyfriend, Philip M. (§ 300, subds. (a) & (b)); failure to provide adult supervision as a result of mother leaving the children home alone late at night (§ 300, subd. (b)); and sexual abuse of Brooklyn by her father, Michael C. (§ 300, subds. (b) & (d)).

Our factual summary that follows focuses on the evidence relevant to the court's finding that mother used inappropriate physical discipline on Clayton. Accordingly, we do not discuss in detail the evidence addressing the allegations that were dismissed.

“[mother] got mad at me, she pushed me against the wall at her work. Then I walked to my dad’s house. I had to walk like 8-9 miles.” Clayton also described a third incident when mother threw a shoe at him. The record does not indicate, however, whether mother hit Clayton with the shoe.

Mother denied that she pushed Clayton into a wall. She claimed that Clayton had gotten “in her face,” so she pushed or “nudged” the child to get him off of her. Mother also denied pushing Clayton out of her car. She told the Department that Clayton “got an attitude with her inside the car,” so she pulled over and told him to walk home so that he could “clear his head.”

In May 2016, after the Department filed the original dependency petition, mother hit Clayton again. Mother and her boyfriend, Joe R., had taken Clayton, Brooklyn, and Clayton’s friend, Destinee, to Joe’s house in San Luis Obispo for the weekend.<sup>4</sup> While Clayton and Brooklyn were playing with each other, Clayton accidentally hit Brooklyn in the face with a yoga ball. When Brooklyn started to cry, Clayton went over to Brooklyn to see if she was okay. As Clayton was leaning over Brooklyn, mother came up from behind and kicked Clayton in the back. Although Clayton did not suffer any bruising, he reported that mother’s kick had “knocked the wind out [him].”

Clayton told the Department that he wanted to live full time with his father because he did not feel safe living with mother. Clayton reported that there are always people “going in and out of the home,” and mother often makes Clayton watch Brooklyn by himself while she sees clients for her “beauty services” business that she runs out of her home. Mother also

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<sup>4</sup> During the three-hour drive to San Luis Obispo, Clayton and Brooklyn did not wear seatbelts.

leaves Clayton and Brooklyn home alone late at night and into the early morning hours about three times a week while she goes out to bars with her friends.

### **3. The jurisdiction and disposition hearing**

The court conducted a contested jurisdiction and disposition hearing over three days in August and November 2016. Clayton, mother, Destinee, and Joe testified about the May 2016 incident in San Luis Obispo and the 2015 incidents of violence involving mother and Clayton.

Clayton and Destinee testified that mother kicked and pushed Clayton after he accidentally hit Brooklyn in the face with a yoga ball. According to Destinee, it looked like mother's kick was "hard" and knocked the breath out of Clayton. When asked whether he was hurt by mother's kick, Clayton responded, "I, like, [was] knocked out of breath, but not as bad as it would be." Clayton later clarified that he meant mother's kick "was hard, just not as bad, like I could have, like, had a broken back or something. But it wasn't that bad."

Mother and Joe denied that mother kicked, pushed, or even yelled at Clayton during the incident in San Luis Obispo. Mother also denied that she intentionally hit Clayton during the three incidents that occurred in 2015.

After the witnesses testified, the court sustained the allegation under section 300, subdivision (b), that mother used inappropriate physical discipline on Clayton, placing him and Brooklyn at risk of serious physical harm. The court dismissed the remaining allegations.

The court then issued its dispositional orders. With respect to Clayton, the court found by clear and convincing evidence "that there is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of [Clayton]

if he were returned home to mother.” The court ordered Clayton removed from mother’s custody and placed in father’s home. The court returned Brooklyn to the custody of mother and Brooklyn’s father. The court ordered mother to complete enhancement services, including participating in joint counseling with Clayton and visiting Clayton in a therapeutic setting.

Mother filed a timely appeal.

## **DISCUSSION**

Mother challenges the sufficiency of the evidence to support the jurisdictional finding under section 300, subdivision (b), and the dispositional order removing Clayton from her custody. As we explain below, substantial evidence supports both the jurisdictional finding and the removal order.

### **1. Standard of Review**

At the jurisdictional stage of a dependency proceeding, the Department must prove by a preponderance of the evidence that the child is a dependent of the court as described by section 300. (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 992 (*Yolanda L.*)). If the court finds that the child falls within the court’s jurisdiction, then the court must determine at the dispositional stage whether the child should continue to reside with his or her parent, or whether the child should be placed somewhere outside of his or her parent’s custody. (*Ibid.*) To support a removal order, the Department must prove by clear and convincing evidence that there is (1) a risk of substantial harm to the child if returned home and (2) a lack of reasonable means short of removal to protect the child’s safety. (*Ibid.*)

We review jurisdictional findings and dispositional orders removing a child from his or her parent’s custody for substantial

evidence. (*In re D.C.* (2015) 243 Cal.App.4th 41, 55.) We will affirm the findings if they are supported by evidence that is reasonable, credible, and of solid value. (*In re R.V.* (2012) 208 Cal.App.4th 837, 843 (*R.V.*)). “We do not evaluate the credibility of witnesses, attempt to resolve conflicts in the evidence or determine the weight of the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court’s order and affirm the order even if there is other evidence supporting a contrary finding. [Citations.] The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order. [Citation.]” (*Ibid.*)

## **2. Substantial evidence supports the court’s jurisdictional finding.**

Mother contends insufficient evidence supports the court’s jurisdictional finding under section 300, subdivision (b). Specifically, mother argues there is insufficient evidence to prove Clayton and Brooklyn suffered, or were at a risk of suffering, serious physical harm as a result of her use of inappropriate physical discipline on Clayton.

Section 300, subdivision (b), provides for dependency jurisdiction when 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 or guardian to adequately supervise or protect the child . . . .” Subdivision (b) “authorizes dependency jurisdiction without a finding that a parent is at fault or blameworthy for her failure or inability to supervise or protect her child.” (*In re R.T.* (July 20, 2017, S226416) \_\_ Cal.5th \_\_, [2017 Cal.Lexis 5130] [disapproving of the holding in *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820, that

the harm or risk of substantial harm to the child must be caused by neglectful conduct on the parent's part].) Instead, the provision "requires no more than the parent's 'failure or inability . . . to adequately supervise or protect the child.' [Citation.]" (*In re R.T.* (July 20, 2017, S226416) \_\_\_ Cal.5th \_\_\_, [2017 Cal.Lexis 5130].)

To sustain an allegation based on risk of future harm to the child, that risk must be shown to exist at the time the court makes the jurisdictional finding. (*Yolanda L.*, *supra*, 7 Cal.App.5th at p. 993.) "The juvenile court need not wait until a child is seriously injured to assume jurisdiction if there is evidence that the child is at risk of future harm from the parent's negligent conduct. [Citation.]" (*Ibid.*) In determining whether the parent's negligent or harmful conduct is likely to recur in the future, courts may consider evidence of the parent's past conduct. (*In re N.M.* (2011) 197 Cal.App.4th 159, 165 (*N.M.*).)

Substantial evidence supports the court's jurisdictional finding under section 300, subdivision (b). With respect to Clayton, the Department presented evidence that mother engaged in a pattern of using inappropriate physical discipline against the child. Mother pushed or kicked Clayton on three different occasions, and she tried to hit the child with a shoe on a fourth occasion. Based on the circumstances of each incident, the court reasonably could conclude that mother's use of physical violence against Clayton was inappropriate, as there is no evidence that Clayton's behavior warranted mother pushing the child into a wall, pushing him from a car, or kicking him in the back. (See *In re D.M.* (2015) 242 Cal.App.4th 634, 641 [to constitute "appropriate discipline," the parent's conduct must be



genuinely disciplinary, necessary, reasonable, and not excessive].)

Mother claims the evidence is insufficient to support a finding that Clayton faced a risk of serious physical harm because the child never suffered any visible injuries, such as bruising or scarring, as a result of mother's conduct. This argument lacks merit. As noted, a juvenile court need not wait until a child is seriously injured by his parent's conduct before the court may exercise jurisdiction over the child. (*Yolanda L.*, *supra*, 7 Cal.App.5th at p. 993.) The Department need only prove that the parent's conduct places the child at risk of suffering serious physical harm as of the time jurisdiction is established. (*Ibid.*) The Department proved that in this case.

Mother has engaged in a pattern of striking or pushing Clayton when she becomes angry with him, and her conduct has escalated in severity over time, as the most serious incident of violence—mother kicking Clayton in the back—occurred in May 2016, several months after the Department filed the original dependency petition. In addition, mother refuses to acknowledge that she has a problem with using inappropriate physical discipline on Clayton. Throughout the Department's investigation, and during the jurisdiction hearing, mother repeatedly denied that she ever intentionally hit Clayton. All of this evidence demonstrates that mother's conduct is likely to recur, and that such conduct may continue to increase in severity over time, thereby placing Clayton at risk of suffering serious harm in the future.

Mother argues the court erred in exercising jurisdiction over Brooklyn because mother never physically disciplined or otherwise inflicted injury on the child. We disagree. A child does

not need to be the object of a parent's violence before the court may exercise jurisdiction under section 300, subdivision (b). Rather, the fact that the child has been exposed to domestic violence within the home is sufficient to support a finding under that subdivision. (*In re R.C.* (2012) 210 Cal.App.4th 930, 941–942.) This is especially true where a parent engages in violence in close physical proximity to the child, “ ‘because, “for example, [the child] could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg. . . .” [Citation.]’ ” (*Ibid.*) Although *R.C.* and the cases it cites involve spousal domestic violence, we see no reason why the same rationale would not apply in a case like the one before us, where a parent uses inappropriate physical discipline on one child in the immediate physical presence of another child.

Here, mother kicked Clayton while he was leaning over Brooklyn. Mother could have missed Clayton and accidentally struck Brooklyn, or mother could have caused Clayton to fall into Brooklyn, either of which could have seriously injured the young child. Based on this incident, mother's pattern of using inappropriate physical discipline on Clayton, and mother's denial of engaging in such behavior, the court reasonably could conclude that mother's conduct also placed Brooklyn at serious risk of physical harm.

**3. Substantial evidence supports the court's removal order.**

Mother next contends the court erred in ordering Clayton removed from her custody. She argues there is insufficient evidence to establish that Clayton faced a present and

substantial danger to his emotional and physical well-being if he were to remain in her custody.<sup>5</sup>

Before removing a child from the custody of his parent, the court must find by clear and convincing evidence that removal is warranted under one of the circumstances set forth in section 361, subdivision (c). Here, the court ordered Clayton removed from mother's custody under section 361, subdivision (c)(1), which provides: "There 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."

To support removal, "[t]he parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the [removal] statute is on averting harm to the child." [Citation.] (*N.M.*, *supra*, 197 Cal.App.4th at pp. 169–170.) When determining whether removal is appropriate, the court may consider the parent's past conduct and the present circumstances. (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917 (*Cole C.*))

Mother has a history of using inappropriate physical discipline when she becomes angry with Clayton or believes

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<sup>5</sup> The Department argues mother forfeited her challenge to the sufficiency of the evidence supporting the order removing Clayton from her custody because she did not object to that order at the disposition hearing. We reject the Department's argument because a challenge to the sufficiency of the evidence to support a removal order cannot be forfeited by a failure to raise the issue below. (*R.V.*, *supra*, 208 Cal.App.4th at p. 848.)

Clayton is misbehaving. Within about a one-year period, mother hit, or tried to hit, the child on at least four separate occasions. Mother's conduct became more severe as time passed, with her most violent outburst occurring after the Department intervened in the family's lives. In addition, mother refused to acknowledge that she had a problem with using inappropriate physical discipline on Clayton. (See *Cole C.*, *supra*, 174 Cal.App.4th at p. 918 [the father's refusal to acknowledge his inappropriate disciplinary techniques supported a finding that there were no reasonable means to protect the child absent removal from the father's custody].) During the Department's investigation, mother repeatedly denied that she ever hit Clayton, and she continued to deny such behavior at the jurisdiction hearing. Based on mother's repeated violent outbursts against Clayton and her denial of engaging in such conduct, the court properly found there were no reasonable means of protecting Clayton without removing him from mother's custody.

## **DISPOSITION**

The juvenile court's jurisdictional finding and dispositional order are affirmed.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

JOHNSON (MICHAEL), J.\*

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