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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

LUIS G.,

Defendant and Appellant.

B271125

(Los Angeles County
Super. Ct. No. CK73413)

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

Mitchell Keiter, under appointment by the Court of Appeal,
for Defendant and Appellant.

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

INTRODUCTION

Luis G., the father of Mary N., appeals from the juvenile court's jurisdiction findings and disposition order removing Mary from her parents' physical custody. Luis argues that substantial evidence did not support either the jurisdiction findings or the removal order. Mary's mother, F.N., has not appealed. We conclude substantial evidence supports both the findings and the order, and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Family*

F.N. has a long history with the Los Angeles County Department of Children and Family Services. Between 2005 and 2013 the Department received 12 referrals regarding F.N. and the fathers of F.N.'s five other children. The referrals included allegations of drug abuse, mental health issues, and domestic violence. F.N. lost custody of her five other children, all of whom have been permanently placed with either their fathers, relatives, or adoptive parents.

When Mary was born, F.N. and Luis were living together, but were homeless. Mary did not test positive for drugs at birth, but she was in respiratory distress and placed in the hospital's neonatal infant care unit.

B. *The Investigation*

Two days after Mary's birth the Department received a referral from the child abuse hotline with allegations that F.N. was neglecting Mary. The referral was based on interviews of F.N. and Luis while they were at the hospital following Mary's

birth. The referral reported the following: Although F.N. had tested negative for drugs when she gave birth to Mary, F.N. had tested positive for methamphetamine at her only prenatal visit, in February 2015. F.N. also admitted she had smoked methamphetamine and marijuana on and off for many years, but said she had last used drugs in February 2015. F.N. discussed her history of depression and bi-polar disorder, but said she currently was not taking any medication for mental illness. The interviewer observed that F.N. was “fidgety” and rocked back and forth during the interview. F.N. and Luis were homeless and had no baby items, and F.N. reported that she would return to the park where they were living once released from the hospital. Luis claimed he had rented a room that would be ready soon.

A social worker subsequently interviewed F.N. and Luis to investigate the allegations of neglect reported in the referral. F.N. admitted she had lost custody of her other children because of drug abuse. She denied having a criminal record, but in fact she had prior convictions for battery, burglary, and, as recently as June 2014, possession of a controlled substance. F.N. attempted suicide when she was 16, and had been hospitalized twice in a psychiatric hospital, but she reported no current suicidal or homicidal ideation. F.N. had been homeless for the past four to five years. She had been in drug treatment programs, but she failed to complete any of them. When asked if she would participate in a drug treatment program, she asked, “[F]or how long?”

The social worker informed Luis that there was an allegation of neglect against F.N. based on her drug use during pregnancy, her history of drug abuse, and the fact that she was homeless. Luis reported that, although they were homeless, they had decided to start a family. He said he worked as a roofer, but

work was unstable. He confirmed he had paid rent for a room for the month of August 2015 and planned to work and borrow money. Luis also said he had used many drugs, but was not addicted. According to Luis, the longest he had gone without using drugs was three years. He stated he last used methamphetamine a month earlier. Luis denied having a criminal history, but in fact in 2007 he had been convicted of violating Vehicle Code section 20002, subdivision (a), failing to stop at the scene of an accident resulting in property damage, and in 2008 he had been arrested for possession of a controlled substance. In 2014 a court had issued a warrant for Luis's arrest for failing to appear in court on the controlled substance charge. Based on the social worker's interviews of F.N. and Luis, the Department detained Mary and placed her in a foster home.

C. The Detention Hearing

On August 5, 2015 the Department filed a petition under Welfare and Institutions Code section 300, subdivision (b).¹ The Department alleged Mary's parents had failed or were unable to supervise or protect her adequately, to protect her from the conduct of the other parent, and to provide regular care for her because of their substance abuse and her mother's mental illness.²

¹ Statutory references are to the Welfare and Institutions Code.

² The Department alleged:

b-1: "[Mary's mother] has a 9 year history of illicit drug use, including methamphetamine, amphetamine, cocaine, ecstasy, opiates, marijuana and alcohol and is a current user of methamphetamine, which renders the mother incapable of

Both parents appeared at the August 5, 2015 detention hearing with counsel. The juvenile court detained Mary pending the next hearing. The court ordered F.N. and Luis to submit to

providing regular care for the child. The mother abused methamphetamine during the mother's pregnancy with the child. The child's [five] siblings . . . received permanent placement services due to the mother's illicit drug use. . . . The child's father knew of the mother's substance abuse and failed to protect the child. The child is of such tender age that the child requires constant care and supervision. Such illicit drug use by the mother, and failure to protect by the father, endangers the child's physical health and safety and places the child at risk of serious physical harm, damage, danger and failure to protect."

b-2: "[Mary's father] is a current user of methamphetamines, which renders the father incapable of providing regular care for the child. In or around June 2015, the father was under the influence of illicit substances. The child's mother . . . knew of the father's substance abuse and failed to protect the child. The child is of such tender age that the child requires constant care and supervision. Said substance abuse by the father, and the mother's failure to protect the child, endangers the child's physical health and safety and places the child at risk of serious physical harm, damage and failure to protect."

b-3: "[Mary's mother] has mental and emotional problems including a diagnosis of Bi-Polar Disorder and Depression and a suicide attempt, which renders the mother unable to provide regular care and supervision of the child. On prior occasions, the mother was involuntarily hospitalized for the evaluation and treatment of the mother's psychiatric condition. The father . . . knew, or reasonably should have known[,] of the mother's mental and emotional problems and failed to protect the child. Such mental and emotional problems on the part of the mother endangers the child's physical health and safety and places the child at risk of serious physical harm, damage and danger."

weekly random drug testing and ordered the Department to provide referrals to drug treatment programs. The court set the matter for a jurisdiction hearing.

D. *The Jurisdiction and Disposition Report and Supplemental Reports*

In its September 29, 2015 jurisdiction and disposition report, the Department reported it had placed Mary with Luis's cousins, Jose D. and Maria L. The Department's report indicated that F.N. repeated her statement that, although she had used drugs continuously since she was 19 years old, she had not used drugs since February 26, 2015, when she learned she was pregnant with Mary. F.N. tested negative for drugs on August 11, 2015, August 27, 2015, and September 2, 2015.

The Department's report also stated that F.N. denied she still suffered from bipolar disorder and claimed that "it goes away on its own over time." In relating her childhood and family history to the social worker, F.N. reported that she had trained as a figure skater for the Olympics and that "Jesus Christ has the pictures of [her] as an Olympic skater." She said her last hospitalization was three or four years ago, but she could not recall why she had been hospitalized. She had taken medication in the past for depression, but she was not currently taking it. She reported that she was not under psychiatric care, but was going to counseling.

The Department's report also stated that Luis told the social worker F.N. did "not have any mental health issues," but that people misinterpret her behavior because she "pray[s] when she is walking on the streets." He confirmed that she attends counseling every day. Luis also told the social worker that he had not used drugs "for a long time," and the last time was

“maybe in March 2015.” He denied he was a drug addict and stated he was not going to counseling. The Department’s last minute information reported that Luis did not appear for drug tests on July 31, 2015 and August 5, 2015, but he tested negative on August 18, 2015 and September 9, 2015. In the jurisdiction and disposition report, the Department recommended that the court order no reunification services for F.N., but it asked the court to provide services for Luis, including a substance abuse program and random drug testing.

On November 17, 2015 the Department reported that F.N. had tested negative for drugs on October 5, 2015, October 16, 2015, and November 3, 2015. She was actively participating in counseling. Luis tested positive for drugs on September 29, 2015, negative on October 6, 2015, and positive on October 21, 2015. Luis had not been participating in counseling.

E. *The Jurisdiction Hearing*

On December 15, 2015 both parents attended the jurisdiction hearing with counsel. The court received into evidence the Department’s reports and some exhibits submitted by F.N. F.N.’s exhibits included (1) a November 9, 2015 letter from her treating psychiatrist at Homeless Health Care Los Angeles stating that F.N.’s “history of Methamphetamine Use Disorder and Marijuana Use Disorder” were “currently in sustained full remission per her report,” she had a diagnosis of major depressive disorder, and she had asked to take psychiatric medication to manage her condition; (2) a November 13, 2015 letter from Homeless Health Care Los Angeles indicating F.N. was enrolled in substance abuse counseling, parenting classes, and other support groups; and (3) a Certificate of Recognition

from Homeless Health Care Los Angeles commending F.N. for her optimism, courage, and dedication to positive change.

Counsel for the Department and counsel for Mary asked the juvenile court to sustain the petition. Counsel for F.N. argued the drug abuse allegations against her were historical and her mental health issues were in remission. Counsel for Luis argued the Department had not proved he failed to protect Mary from F.N.'s substance abuse because F.N. had stopped using drugs when she learned she was pregnant. In addition, counsel argued that Luis could not have failed to protect Mary from F.N.'s mental health issues because F.N.'s mental health issues did not present a risk of harm to Mary. Finally, counsel conceded Luis had a history of using drugs and had tested positive in September and October 2015, but counsel argued Mary was not in Luis's care at that time.

The juvenile court concluded there was an "extreme history here" and found by a preponderance of the evidence that the allegations in counts b-1, b-2, and b-3 of the petition were true. The court found that Mary was a person described in section 300. The court ordered continued monitored visits and ordered the Department to prepare a written visitation schedule for both parents.

F. *The Last Minute Information Reports*

In a January 26, 2016 last minute information, the Department indicated that the parents' failure to advise the Department of their availability hampered efforts to develop a written visitation plan. Mary's caregivers stated that it was difficult to schedule visits because the parents did not have a working telephone, they had moved, and they might move again soon. As of January 7, 2016 Mary's caregivers reported that

neither parent had visited Mary for approximately two months. The Department also reported that F.N. told the social worker she and Luis had seen Mary once a week but, when confronted with the contrary reports, admitted they had not seen Mary every week because they had been “really busy.” Luis confirmed that it was difficult to set up a visitation schedule because of the caregivers’ and his work schedules. He stated that he had not participated in counseling because of the cost, although he had received numerous referrals for low-cost or free counseling services.

In another last minute information, the Department reported that F.N. and Luis had been in partial compliance with the court’s orders by continuing to submit to drug testing and had visited Mary on January 2, 2016 and February 14, 2016. F.N. tested negative for drugs on December 10, 2015, December 22, 2015, January 4, 2016, and January 29, 2016. Luis tested negative on December 3, 2015, December 23, 2015, and January 11, 2016. F.N.’s therapist confirmed that F.N. was still participating in counseling.

G. *The Disposition Hearing*

The juvenile court held the contested disposition hearing on March 1, 2016. Although both parents had notice of the hearing, neither appeared.

At the hearing counsel for the Department recommended reunification services for Luis but not for F.N. because she had been unable to reunify with Mary’s siblings due to her continued drug abuse. Counsel for F.N. submitted a January 22, 2016 letter from Homeless Health Care Los Angeles stating that F.N. had been in a program to treat her mental health and substance abuse issues since August 25, 2015 and was continuing to

participate in parenting classes. Counsel for F.N. argued that, because F.N. was making reasonable efforts to address the issues that led to the removal of her other children, the court should order reunification services for her. Counsel for Luis stated that she “would submit the matter to the court in regards to mother.” Other than stating she had reviewed the Department’s case plan recommending reunification services for Luis, counsel for Luis did not present any evidence or argument. Counsel for Mary submitted the issue to the court.

The court declared Mary a dependent of the court under section 300. The court stated: “I find by clear and convincing evidence under Welfare and Institutions Code section 361(c) that there is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child if the child were returned home, and there are no reasonable means by which the child’s health may be protected without removing her from her parents’ physical custody. I find the Department has made reasonable efforts to prevent or eliminate the need for removal from [F.N.] and [Luis].” The court found that the Department had not met its burden of showing the bypass provisions of section 361.5, subdivision (b)(10), applied with respect to F.N.,³ and the court ordered reunification services

³ Section 361.5, subdivision (b)(10), provides: “Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, [that] the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in

for both F.N. and Luis. The court ordered Luis to submit to weekly random and on-demand drug testing, participate in a full drug and alcohol program with aftercare, and attend a parenting course. The court ordered continued monitored visits and set a review hearing for August 30, 2016, along with concurrent services planning for legal permanence. Luis timely appealed.

DISCUSSION

A. *Standard of Review*

“In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.]”” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) “Thus, we do not consider whether there is evidence from which the dependency court could have drawn a different conclusion but whether there is substantial evidence to support the conclusion that the court did draw.” (*In re Noe F.* (2013) 213 Cal.App.4th

subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian.”

358, 366.) The appellant has the burden to show that substantial evidence does not support the finding or the order. (*In re Liam L.* (2015) 240 Cal.App.4th 1068, 1087.)

B. *Substantial Evidence Supported the Juvenile Court’s
Jurisdiction Findings*

A juvenile court may determine a child is subject to the court’s jurisdiction if it finds by a preponderance of the evidence that “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child . . . [or a parent’s inability to] provide regular care for the child due to the [parent’s] mental illness, developmental disability, or substance abuse.” (§ 300, subd. (b).) “A jurisdictional finding under section 300, subdivision (b), requires: “(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) “serious physical harm or illness” to the child, or a “substantial risk” of such harm or illness.” [Citations.] The third element “effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future. . . .” [Citation.]’ [Citation.] Jurisdiction may be exercised ‘based on . . . a current or future risk.’” (*In re Cole Y.* (2015) 233 Cal.App.4th 1444, 1452.) The juvenile court need not wait until a child is seriously injured to assume jurisdiction and take steps necessary to protect the child. (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383; *In re N.M.* (2011) 197 Cal.App.4th 159, 165.)

The juvenile court found by a preponderance of the evidence that the allegations in counts b-1, b-2, and b-3 of the petition were true. We conclude there was sufficient evidence of

a substantial risk that Mary would suffer serious physical harm due to the inability of F.N. and Luis to provide regular care for her because of their substance abuse, as the Department alleged in counts b-1 and b-2. Because substantial evidence supports the findings related to these two counts, we affirm the juvenile court's jurisdiction order and need not address the remaining bases asserted in count b-3 relating to F.N.'s mental health. (See *In re Kadence P.*, *supra*, 241 Cal.App.4th at p. 1385; *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)⁴

1. *There Was Substantial Evidence That F.N.'s Long History of Substance Abuse Subjected Mary to a Substantial Risk of Harm*

There was a substantial risk of future harm to Mary because of F.N.'s long history of drug abuse. (See *In re Kadence P.*, *supra*, 241 Cal.App.4th at p. 1383 ["court may consider past events in deciding whether a child currently needs the court's protection"]; *In re S.O.* (2002) 103 Cal.App.4th 453, 461 [parent's past conduct may be probative of current conditions if there is reason to believe that the conduct will continue].) Although F.N.'s treating physician stated that her substance use disorders were in remission based on F.N.'s self-reporting of no drug use for approximately eight months, F.N. had used drugs, including methamphetamine, for over a decade.

⁴ Although we may affirm the juvenile court's finding of jurisdiction over a child if substantial evidence supports any one of the statutory bases for jurisdiction enumerated in the petition, we reach the merits of the court's findings related to drug abuse by both F.N. and Luis because those jurisdiction findings are relevant to the court's disposition order. (See *In re Drake M.* (2012) 211 Cal.App.4th 754, 762.)

She lost custody of five other children in part because of her drug abuse, and her prior attempts at treatment had been unsuccessful. F.N. and Luis stated they were trying to start a family, yet F.N. used methamphetamine during her pregnancy with Mary. (See *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1218-1219 [use of cocaine during pregnancy, combined with drug use in the past and failure to consistently test, constitutes substance abuse].)

Although F.N. was working to resolve her drug abuse problems and had tested negative for drugs for almost five months at the time of the jurisdiction hearing, courts recognize that long-term drug addiction cannot be resolved in a matter of months. (See, e.g., *In re J.C.* (2014) 233 Cal.App.4th 1, 7 “[g]iven [the father’s] years-long struggles with drug abuse, his seven months of sobriety did not mean that he was no longer at risk of relapsing”]; *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423-424 [father’s “200 days [of sobriety] was not enough to reassure the juvenile court that the most recent relapse would be his last”].) Given F.N.’s relatively short period of sobriety, compared to her long history of drug abuse, there was sufficient evidence for the court to conclude that Mary was at risk of current and future harm. (See *In re Cole Y., supra*, 233 Cal.App.4th at p. 1452.)

Luis argues that F.N.’s “teenage use” of drugs over a decade ago was too remote in time to show a current substantial risk of harm to Mary. Luis’s reference to F.N.’s past use, however, ignores F.N.’s positive drug test for methamphetamine at her first and only prenatal visit in February 2015. F.N.’s confirmed prenatal drug use was substantial evidence of risk to Mary. (See, e.g., *In re Troy D.* (1989) 215 Cal.App.3d 889, 900 “[m]other’s prenatal drug use indicated that [baby] was at risk and in need of the court’s protection”].) Moreover, because F.N. did not attend

any further prenatal checkups, there is no evidence she remained drug-free for the remainder of her pregnancy. Luis also argues that F.N. had seven negative drug tests in the four-and-a-half months between Mary's birth and the jurisdiction hearing. As noted, however, the court was reasonably concerned that not enough time had passed to show that F.N. would continue to avoid abusing drugs. (See *In re J.C.*, *supra*, 233 Cal.App.4th at p. 7.)

In support of his argument that F.N.'s past drug use was not substantial evidence that Mary was at a current risk of harm, Luis relies on *In re Destiny S.* (2012) 210 Cal.App.4th 999, where the court held that the record lacked evidence that the child was at risk of physical harm as the result of her mother's past and current methamphetamine and marijuana use. (*Id.* at p. 1003.) *Destiny S.*, however, is distinguishable. In that case the evidence showed that the mother had abused drugs nine years prior to the juvenile court proceedings. She tested positive for methamphetamine one time after the detention hearing, but then tested clean for three months prior to the jurisdiction hearing. (*Id.* at p. 1004.) The child was 11 years old, had no behavioral or discipline issues, attended school regularly, wanted to "go back with [her] mom," and the mother had a well-kept home with no visible drug paraphernalia. (*Ibid.*)

In contrast, Mary was a newborn who required constant care. (See *In re Kadence P.*, *supra*, 241 Cal.App.4th at p. 1384 [jurisdiction is proper when a child is of "such tender years that the absence of adequate supervision and care poses an inherent risk to [his or her] health and safety"].) F.N. had a long history of drug abuse that led to the removal from her custody of five other children, a relatively short period of sobriety, a history of inability to successfully treat her drug addiction, and the

additional challenges of mental health issues and homelessness. Unlike the mother in *Destiny S.*, F.N. had not yet demonstrated she had the ability to overcome her drug abuse problem and care for a child. (See *In re Kadence P.*, at p. 1383.)

2. *There Was Substantial Evidence That Luis's Untreated Substance Abuse Presented a Substantial Risk of Harm to Mary*

This court has held that a parent's repeated use of drugs, combined with other factors, such as the failure to test negative consistently, failure to enroll in a treatment program, and failure to fulfill major role obligations at work or at home, may support a juvenile court's finding of substance abuse by a parent. (See *In re Christopher R.*, *supra*, 225 Cal.App.4th at pp. 1218-1219.) A finding of substance abuse by a parent of a child under six years old is *prima facie* evidence of that parent's inability to provide regular care resulting in a substantial risk of harm to the child. (See *In re Kadence P.*, *supra*, 241 Cal.App.4th at p. 1385; *In re Christopher R.*, at p. 1217.)

Substantial evidence supports the finding that Luis abused drugs. Although he stated he was not addicted to drugs and only used them occasionally, he admitted he used methamphetamine in March 2015, a month after F.N. learned she was pregnant with Mary. During the pendency of the dependency proceedings, he twice tested positive for methamphetamine and several times missed drug tests, which courts treat as positive tests. (See *In re Kadence P.*, *supra*, 241 Cal.App.4th at p. 1384 [a "missed drug test, without adequate justification, is 'properly considered the equivalent of a positive test result'"].) Luis did not enroll in a drug treatment program, even though the Department provided him with no- or low-cost referrals. Finally, Luis was homeless

and worked only occasionally, indicating an inability to fulfill major role obligations. The juvenile court could reasonably have found that Luis had a substance abuse problem. (See *In re Natalie A.* (2015) 243 Cal.App.4th 178, 185 [substantial evidence supported the finding that the father was a substance abuser where the father left the young children alone so he could smoke marijuana, could not fulfill major role obligations, including maintaining employment and housing, and failed to enroll in drug treatment program]; *In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1217.) And because Mary was a newborn, Luis's drug abuse was prima facie evidence of his inability to care for her. (See *In re Christopher R.*, at p. 1220.)

Luis argues that, although he used methamphetamine after Mary was born, there was no opportunity to assess whether he would have stopped using drugs after he became a father because Mary was never in his custody. This argument disregards the substantial evidence on which the juvenile court based its jurisdiction findings: Luis's history of drug abuse, his positive and missed tests during the pendency of the proceeding, and his failure to participate in a treatment program even during the pendency of the juvenile proceedings regarding custody of his child. Although it is possible Luis would have stopped using drugs had the court given him custody of Mary, the juvenile court could reasonably have concluded, based on Luis's current drug use and his failure to acknowledge and treat the problem, that he would not. (See *In re James R., Jr.* (2009) 176 Cal.App.4th 129, 135 [reviewing court draws all reasonable inferences in support of the findings and views record favorably to the juvenile court's order].)

C. *Substantial Evidence Supports the Court's Removal Order*

“Before the court may order a child physically removed from his or her parent’s custody, it must find, by clear and convincing evidence, the child would be at substantial risk of harm if returned home and there are no reasonable means by which the child can be protected without removal. [Citations.] The jurisdictional findings are prima facie evidence the minor cannot safely remain in the home. [Citations.] 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.” (*In re J.S.* (2014) 228 Cal.App.4th 1483, 1492; see *In re Hailey T.* (2012) 212 Cal.App.4th 139, 146.) “In making its disposition orders the court has broad discretion to resolve issues regarding the custody and control of the child, including deciding where the child will live while under the court’s supervision.” (*In re Anthony Q.* (2016) 5 Cal.App.5th 336, 346.)

The same substantial evidence that supported the juvenile court’s jurisdiction findings also supports the juvenile court’s decision to remove Mary from Luis’s physical custody. (See *In re J.S.*, *supra*, 228 Cal.App.4th at p. 1492.) As noted, Luis’s ongoing drug use and his failure to participate in treatment presented a risk to Mary’s safety. This was substantial evidence that Luis was not prepared to provide Mary with a safe home.

Luis argues that his and F.N.’s history of drug abuse was not substantial evidence supporting removal. He contends that between the two of them they would have been able to provide a safe environment for Mary because if one of them relapsed, the other would be able to care for Mary. There is no guarantee, however, that both he and F.N. would not relapse at the same

time. As noted, F.N. had a history of drug addiction and failed attempts at sobriety. Luis had recently failed drug tests and was not seeking treatment. Both parents' substance abuse is "prima facie evidence of [their] inability . . . to provide regular care resulting in a substantial risk of physical harm." (*In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1220.)

DISPOSITION

The juvenile court's December 15, 2015 jurisdiction findings and March 1, 2016 disposition order are affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.