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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

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

In re P.S. et. al., Persons Coming Under the Juvenile Court Law.	B279689 (Los Angeles County Super. Ct. No. DK18779)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. PRINCE S., SR., Defendant and Appellant.	

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

Emery El Habiby, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Sarah Vesecky, Senior Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Prince S., Sr., the father of four-year-old E.S. and three-year-old P.S., appeals from the juvenile court's jurisdiction findings and disposition orders under Welfare and Institutions Code section 300[1] involving the conduct of Tamara M., the mother of E.S. and P.S. The juvenile court sustained allegations that Tamara "inappropriately physically disciplined" E.S. by hitting her with a shoe and a wooden spoon, abused marijuana, and left the children with a caretaker who in turn left the children with a teenager who was smoking marijuana. Although the petition did not name Prince—he lived in Nevada and had little contact with the children—the court nevertheless ordered him to attend parenting classes and submit to random drug testing. Because substantial evidence supported the court's jurisdiction findings, and the disposition orders were not an abuse of discretion, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Petition*

On August 15, 2016 the Los Angeles County Department of Children and Family Services filed a dependency petition alleging E.S. and P.S. were within the jurisdiction of the juvenile

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1 Statutory references are to the Welfare and Institutions Code.

court under section 300, subdivisions (a), (b)(1), and (j).[2] According to the Department's allegations, Tamara hit E.S. more than once with a shoe and a wooden spoon, and had given her a black eye; Tamara hit E.S. and P.S.'s older sister with a wooden spoon and a belt; Tamara's marijuana abuse interfered with her ability to care for and supervise the children; and Tamara allowed her "underage male companion's friend to supervise the children while smoking marijuana." The court detained E.S. and P.S. and placed them in foster care, where they remained until the jurisdiction and disposition hearing.

The petition did not mention Prince. He lived in Las Vegas, Nevada with his significant other and her two children and he had not seen E.S. and P.S. for seven months. Over the next five weeks, while the children were in foster care, Prince did not call or visit them.

B. *Jurisdiction*

On September 30, 2016 the court held a jurisdiction and disposition hearing. Prince did not attend the hearing, but he was represented by an attorney. At the jurisdiction phase, Tamara testified that, if the children "do something really bad," she disciplines them by hitting them with her hands or with a belt, and that she had "popped" then-three-year-old E.S. and then-two-year-old P.S. over their diapers, causing them to cry.

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[2] The petition also alleged that E.S. and P.S.'s half-sister, A.S., came within the jurisdiction of the juvenile court under the same subdivisions of section 300. A.S. has a different father and is not a subject of this appeal.

She also testified she would not physically discipline the children in the future.

Before the hearing, Tamara gave the social worker conflicting accounts of her use of physical discipline, including (1) she hit the children with a shoe a few times, but never used a wooden spoon to discipline them; (2) she "'taps' the children on the hand with a spoon" but she did not "'recall'" using a shoe to discipline them, and (3) she only threatened to hit them with a spoon, but had never actually hit them with a belt, a shoe, or a spoon. E.S. and P.S.'s sister, on the other hand, told the social worker that their mother hit three-year-old E.S. "with a shoe on her behind" and sometimes hit two-year-old P.S. Tamara admitted she "popped [E.S.] with a shoe" after three-year-old E.S. lit a firecracker, and Tamara testified that other forms of discipline like "standing in the corner" or "taking something" from E.S. "wouldn't have done anything" in that situation. Tamara's landlord, who was also her friend, told the social worker he saw Tamara spank E.S. when she was two and a half years old because "the child's legs were apart." According to the friend, Tamara "spank[ed] [E.S.] on the leg, 'to keep her legs together.'" Both E.S. and P.S. had speech delays and could not be interviewed.

Tamara's attorney asked that "the petition be dismissed as pled." Prince concedes he "did not actively participate in the

jurisdictional hearing."[3] Counsel for the children asked the court to "sustain an inappropriate physical discipline count or counts" because of how young E.S. and P.S. were.

The juvenile court amended the allegations in the petition under section 300, subdivision (b), and sustained those allegations as amended. The sustained allegations were in pertinent part:

"b-2 On prior occasions, the children [A.S.], [E.S.] and [P.S.]'s mother, Tamara [M.] inappropriately physically disciplined the child, [E.S.], by striking the child[] with a shoe. On previous occasions, mother struck the child with a wooden spoon. Such physical abuse was excessive and caused the child unreasonable pain and suffering. The physical abuse 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 and the child's siblings, [A.S.] and [P.S.] at risk of physical harm, damage, and physical abuse.

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[3] The Department argues the doctrines of forfeiture and invited error preclude Prince from challenging the court's jurisdiction findings. A parent who does not contest jurisdiction, however, may "'submit the jurisdictional determination to the court based on the information provided to the court . . . .'" (*In re N.M.* (2011) 197 Cal.App.4th 159, 166, quoting Cal. Rules of Court, rule 5.682(e).) And a parent who submits the jurisdiction determination to the court "does not waive his or her right to challenge the sufficiency of the evidence." (*In re N.M.*, at p. 167; see *In re Isabella F.* (2014) 226 Cal.App.4th 128, 136 ["'[s]ufficiency of the evidence [requires] no further steps by the aggrieved party to be preserved for appeal'"].)

"b-3 The children [A.S.], [E.S.] and [P.S.'s] mother, Tamara [M.] is a current user of marijuana which renders the mother incapable of providing regular care and supervision of the child. The children, [E.S.] and [P.S.] are of such a young age requiring constant care and supervision and the mother's substance abuse interferes with providing regular care and supervision of the children. The mother's substance abuse endangers the children's physical health and safety and places the children at risk of serious physical harm, damage and danger."

"b-4 On prior occasions, the children [A.S.], [E.S.] and [P.S.'s] mother, Tamara[,] placed the children[ ] in a detrimental and endangering situation in that the mother left the children with a caretaker who . . . allowed [an] underage male to supervise the children while smoking marijuana and being under the influence of marijuana in the children's home. The children, [E.S.] and [P.S.] are of such a young age requiring constant care and supervision. Such a detrimental and endangering situation established for the children by the mother and the mother's failure to protect, endangers the children's physical health and safety and places the children at risk of physical harm, damage and danger and failure to protect."

C. *Disposition*

The court proceeded to disposition. The parties stipulated Prince would have testified "it's been hard to visit since he lives in Las Vegas, Nevada, and because of his work. And now he's been on-call for his business, and he must be able to report when they call him. Secondly, he hasn't called the children because he

says it's very emotional to speak to his two- and three-year-old on the phone and not to be able to be with them."

Prince told the social worker that Tamara was "soft" when disciplining the children and that, when they were raising the children together, he had been "more the disciplinarian." He said that, when disciplining the children, "'we don't spare the rod. I follow the Bible.'" Tamara described an encounter between Prince's six-year-old son with a different mother and then-six-year-old A.S. that appeared sexual. In July 2015, while Prince's son was visiting A.S., E.S., and P.S.'s home "for a bit," Prince found his son on top of A.S., became angry, and "whooped" him. A.S. subsequently began displaying some sexualized behaviors and touching her private parts with her hands. Prince explained to the social worker that he told A.S. to stop, and, when she did not stop, he "popped her."

Tamara's landlord said he did not like Prince because he did not work and "'smoked too much marijuana.'" According to the landlord, Prince used to smoke marijuana with Tamara in the bedroom while the children were at home in another room. Prince admitted the last time he used marijuana he "kind of overdid it." And, in February 2013, Los Angeles County Sheriff's Department deputies arrested Prince, who was carrying a loaded revolver in a backpack, smelled like marijuana, and had marijuana in his pocket.

The Department recommended that the court not place E.S. and P.S. with either parent, but that both parents receive six months of family reunification services. The Department recommended that Tamara "participate in services to address her issues, including Individual Counseling . . . , Parenting Classes to

include appropriate discipline techniques, Random Drug Testing, [and] Sexual Abuse Awareness Classes." The Department recommended that Prince "participate in services to address his issues, including Parenting Classes to understand appropriate developmental stages and levels, as well as Random Drug Testing due to his reported marijuana use[ ]."

The juvenile court ordered E.S. and P.S. "placed in the home of parent-mother," under the Department's supervision.[4] The juvenile court ruled, "I'm going to allow mother to retain physical custody of the children, and that's because I believe that mom is trying to . . . be a good mom, and she just needs some help. And so she needs services in the home[,]. . . counseling[,] and . . . supervision of the Department right now." The juvenile court ordered Tamara to take parenting classes, engage in individual counseling to address sex abuse awareness, and submit to biweekly drug tests. The juvenile court ordered Prince

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[4] The court denied Prince's attorney's request for a "home of parents" order (instead of a "home of parent-mother" order), explaining, "I would make a detriment finding by clear and convincing evidence because of evidence that [Prince] smoked copious amounts of marijuana in the home when he lived there with mother; his own statements that he doesn't spare the rod with his children; the fact that after he fell out with the mother, he essentially abandoned . . . the kids [and] hasn't been visiting and he hasn't called. For all those reasons, I make a detriment finding." The court held that "[s]ubstantial danger exists to [E.S. and P.S.'s] physical health" or emotional health, and that "there is no reasonable means to protect [them] without removal from parent's or guardian's physical custody," but the court specified that the order applied only to Prince.

to take parenting classes and submit to eight random or on demand drug tests. The court also ordered the children to remain in California and allowed Prince to have unmonitored visitation "in California after 2 clean tests." Prince filed a timely notice of appeal of the September 30, 2016 jurisdiction and disposition orders.

DISCUSSION

A. *Prince's Appeal from the September 30, 2016 Jurisdiction Findings Is Not Moot*

On January 31, 2017 the Department filed a section 342 petition. In the new petition, the Department alleged that Tamara was "unable and unwilling to provide the children with ongoing care and supervision," which endangered the children's physical health, safety and well-being and placed them at substantial risk of serious physical harm, and that Tamara had failed to comply with the juvenile court's orders to take parenting classes and submit to random drug testing. That same day, the juvenile court ordered E.S. and P.S. detained in shelter care.

On March 27, 2017 the juvenile court amended the section 342 petition by striking the first allegation, which left only the second allegation that Tamara had not complied with the court-ordered case plan. Tamara pleaded no contest to the petition as amended, and the juvenile court sustained it. The juvenile court removed E.S. and P.S. from Tamara's custody and placed them in the Department's care "for suitable placement." Neither Prince nor Tamara appealed from the March 27, 2017 orders.

The Department argues Prince's appeal from the September 30, 2016 jurisdiction findings is moot because the juvenile court has since sustained an allegation in the supplemental section 342 petition. Therefore, according to the Department, reversing the original jurisdiction findings "would be an idle act" because the juvenile court would still have jurisdiction over the children based on the sustained allegation in the section 342 petition. Although the Department's mootness argument would have merit in some circumstances, it does not here.

"An appeal may become moot where subsequent events, including orders by the juvenile court, render it impossible for the reviewing court to grant effective relief." (*In re E.T.* (2013) 217 Cal.App.4th 426, 436.) In general, if the juvenile court exercises jurisdiction on an independent basis (see § 342 ["new facts or circumstances . . . sufficient to state that the minor is a person described in Section 300"]), an appeal from earlier jurisdiction findings is moot. (See *In re Travis C.* (2017) 13 Cal.App.5th 1219, 1224-1225; *In re A.B.* (2014) 225 Cal.App.4th 1358, 1364.) This is because, if "jurisdiction was established independently under the subsequent petition on entirely new and independent facts," "reversal of the jurisdictional finding under the original petition would be futile." (*In re A.B.*, at p. 1364.) Nevertheless, we review whether a dependency appeal is moot on a ""case-by-case basis."" (*In re J.P.* (2017) 14 Cal.App.5th 616, 623.)

Here, the only allegation in the section 342 petition the court sustained was that Tamara did not engage in the services the juvenile court mandated at disposition on the original petition. If the juvenile court erred when it assumed jurisdiction

and ordered Tamara to engage in the services, then Tamara's failure to engage in those services would not support the juvenile court's later exercise of jurisdiction over the children. Far from establishing jurisdiction "independently" based on "new and independent facts," the only new fact—that Tamara did not engage in court-mandated services—was entirely dependent on the original jurisdiction finding and disposition orders. (See *In re A.B.*, *supra*, 225 Cal.App.4th at p. 1364.)

""An issue is not moot if the purported error infects the outcome of subsequent proceedings."" (*In re E.T.*, *supra*, 217 Cal.App.4th at p. 436.) Because the purported error has already infected the outcome of subsequent proceedings, the appeal is not moot. (See *In re J.P.*, *supra*, 14 Cal.App.5th at p. 623 [an appeal is not moot but rather "all the more important" if a parent "has lost custody of his children for failing to make sufficient progress" toward a case plan that is the subject of the appeal]; see also *In re N.S.* (2016) 245 Cal.App.4th 53, 61 [appeal from jurisdiction findings is not moot, notwithstanding the termination of dependency proceedings, if those findings were the basis for restrictive visitation and custody orders].)

B. *Substantial Evidence Supports the Juvenile Court's Jurisdiction Findings*

Prince argues there is no substantial evidence to support the jurisdiction findings because Tamara "engaged in reasonable parental discipline," there was "no nexus to any current risk of substantial harm to the children" from Tamara's marijuana use, and Tamara "did not know or have any reason to know [the person she left the children with] would leave the children alone

with an underage male who was smoking marijuana." There is substantial evidence, however, to support the first finding.

"'In reviewing the jurisdictional findings . . . , we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] 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.]" (*In re Natalie A.* (2015) 243 Cal.App.4th 178, 184. "The juvenile [court's] determination will not be disturbed unless it exceeds the bounds of reason." (*In re Roxanne B.* (2015) 234 Cal.App.4th 916, 920.) """However, substantial evidence is not synonymous with any evidence,""" and """[a] decision supported by a mere scintilla of evidence need not be affirmed on appeal."""" (*In re Drake M.* (2012) 211 Cal.App.4th 754, 763.)

Substantial evidence supports the juvenile court's finding under section 300 that Tamara "inappropriately physically disciplined" three-year-old E.S. by hitting her more than once with a shoe and a wooden spoon, and that as a result E.S. and P.S. were at substantial risk of suffering serious physical harm.[5]

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[5] Although the juvenile court made its findings under section 300, subdivision (b)(1), the finding regarding E.S. should have been under section 300, subdivision (a), and the finding regarding P.S. should have been under section 300, subdivision (j). (See § 300, subd. (a) ["[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent"]; § 300, subd. (j) ["[t]he child's sibling has been abused or

Tamara's inconsistent accounts of how she physically disciplined the children suggest an attempt to minimize the severity of the physical discipline. Although section 300 does not define "serious physical harm," such harm "does not include reasonable and age-appropriate spanking to the buttocks if there is no evidence of serious physical injury." (§ 300, subd. (a).) "Whether a parent's use of discipline on a particular occasion falls within (or instead exceeds) the scope of [the] parental right to discipline turns on three considerations: (1) whether the parent's conduct is genuinely disciplinary; (2) whether the punishment is 'necess[ary]' (that is, whether the discipline was 'warranted by the circumstances'); and (3) 'whether the amount of punishment was reasonable or excessive.'" (*In re D.M.* (2015) 242 Cal.App.4th 634, 641; cf. *Gonzalez v. Santa Clara County Dept. of Social Services* (2014) 223 Cal.App.4th 72, 75 ["successful assertion of the parental disciplinary privilege under the Child Abuse and Neglect Reporting Act requires three elements: (1) a genuine disciplinary motive; (2) a reasonable occasion for discipline; and (3) a disciplinary measure reasonable in kind and degree"].)

Under the statutory language in section 300 and the framework of *In re D.M.*, substantial evidence supports the

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neglected, as defined in subdivision (a) . . . , and there is a substantial risk that the child will be abused or neglected"].) Prince does not argue that, as a result of this error, he was denied due process, and we note the petition contained allegations under section 300, subdivisions (a) and (j). (See *In re Cole C.* (2009) 174 Cal.App.4th 900, 913 ["[d]ue process in the context of dependency law tends to focus on the right to a hearing, the right to notice and an opportunity to present objections"].)

finding that Tamara's discipline was not "reasonable and age-appropriate" or "warranted by the circumstances." "Small children" like E.S. and P.S. "are not to be hit with hard objects." (*In re A.E.* (2008) 168 Cal.App.4th 1, 4; see *In re D.M.*, *supra*, 242 Cal.App.4th at pp. 641-642, 649 (dis. opn. of Chavez, J.) [comparing unreasonable discipline with objects such as a belt, a pipe, a broom, and an electric cord, with reasonable discipline such as a slap on the buttocks with an open hand and unintentional fingernail injuries].) There is generally no "reasonable occasion" to physically punish a very young child with a hard object. (Cf. *Johnson v. Prasad* (2014) 224 Cal.App.4th 74, 80 ["'[i]t is a matter of common experience that children of tender years are guided in their actions by childish instincts, and are lacking in that discretion which is ordinarily sufficient to enable those of more mature years to appreciate and avoid danger'"].) To the contrary, children " ' "of such tender years'" require a heightened level of care and supervision. (*In re Natalie A.*, *supra*, 243 Cal.App.4th at p. 186.) For example, in *In re A.E.*, the juvenile court ordered the nonoffending father of a six-year-old child and three-year-old child to attend counseling after his ex-wife physically disciplined the children with hard objects. (*In re A.E.*, at p. 3.) Explaining "why that order was correct," the court described the father's denial that there had been any abuse as "worrisome and untutored," and the court "hoped that counseling will succeed in instilling in father an understanding" that "children cannot be assaulted physically in the name of discipline." (*Id.* at pp. 4-5.) Substantial evidence supported the juvenile court's finding that jurisdiction was appropriate, and that parenting classes might help Tamara and

Prince reach a similar understanding—that spanking children just because their "legs are apart" or using "the rod" are not warranted and appropriate punishments for children as young as E.S. and P.S.[6]

C. *The Juvenile Court's Disposition Orders Were Reasonable Exercises of Discretion*

Prince argues, "The juvenile court abused its discretion in ordering Prince[ ] to attend parenting classes, submit to drug testing, and for monitored visits with the children because the orders were not designed to eliminate those conditions that led to the court's finding that the children were persons described by Section 300."[7] We find no abuse of discretion.

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[6] We do not address the court's findings that Tamara's marijuana abuse endangered the children and that, on one occasion, Tamara left the children with a caretaker who allowed a minor smoking marijuana to supervise the children. (See *In re D.P.* (2014) 225 Cal.App.4th 898, 902 ["'[w]hen 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'"].)

[7] Prince also argues the "detriment finding as to Prince[ ] under section 361.2 was not supported by substantial evidence." According to Prince, "In removing the children from Prince[ ], the juvenile court based its detriment finding on the fact Prince[ ] disclosed smoking copious amounts of marijuana in the home when he lived with the mother, his statements he did not spare

Under section 362, subdivision (d), the juvenile court at disposition "may direct any reasonable orders to the parents . . . of the child who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out this section." If the parent is directed to participate in a counseling or education program, that program "shall be designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300." (§ 362, subd. (d).) However, "[t]he problem that the juvenile court seeks to address need not be described in the sustained section 300 petition." (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311; see *ibid.* ["[a]t disposition, the juvenile court is not limited to the content of the sustained petition when it considers what dispositional orders would be in the best interests of the children"].) To the contrary, "'[t]he juvenile court has broad discretion to determine what would best serve and protect the child's interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion.' [Citation.] In reviewing an order for abuse of discretion, we "'must consider all the evidence, draw all

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the rod in disciplining the children, his admission he abandoned the family after a falling out with the mother, and because he had not visited or called the children. [Citation.] These facts, [whether] alone or in combination, did not constitute clear and convincing evidence of detriment to the children if they were released to Prince[ ] under section 361.2." Section 361.2 applies only "[w]hen a court orders removal of a child . . . ." (§ 361.2, subd. (a).) Section 361.2 does not apply here because the juvenile court did not remove E.S. and P.S. from the only parent with whom they resided—Tamara.

reasonable inferences, and resolve all evidentiary conflicts, in a light most favorable to the trial court's ruling. [Citation.] The precise test is whether any rational trier of fact could conclude that the trial court order advanced the best interests of the child.'"" (*In re Natalie A.*, *supra*, 243 Cal.App.4th at pp. 186-187.)

"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)) . . .—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." (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491.) Thus, the court may order a parent whose conduct is not described in the petition to participate in services. (See *In re D.M.*, *supra*, 242 Cal.App.4th at p. 639 [a disposition order may reach both parents, including a nonoffending parent, as long as the order is reasonable and "'designed to eliminate [the] conditions that led to the court's [still valid jurisdiction] finding'"]; *In re I.A.*, at p. 1492 ["[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"].)

Here, one of the conditions that led to the juvenile court's jurisdiction findings was Tamara's inappropriate physical discipline. According to Prince, however, before he abandoned the children he was an even harsher disciplinarian than Tamara. And Prince admitted to physically disciplining his six-year-old daughter (A.S.) for displaying sexualized behavior. Thus, the court's order requiring Prince to attend parenting classes was warranted to address physical mistreatment E.S. and P.S. had

suffered or might suffer under the guise of physical discipline.

The juvenile court's order that Prince submit to drug testing, including testing clean twice before seeing his young children without supervision, was in the children's best interest because Prince admitted overusing marijuana, and there was evidence he smoked marijuana both with Tamara while at home with their young children and while carrying a loaded revolver. Thus, as in *In re Briana V.*, "there is an evidentiary basis" here for the disposition orders. (See *In re Briana V.*, *supra*, 236 Cal.App.4th at p. 312 [disposition order that father attend sexual abuse counseling was not an abuse of discretion despite that there was no evidence the children had suffered sexual abuse]; *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008 ["the [juvenile] court would have been remiss if it failed to address appellant's substance abuse even though that problem had not yet affected his ability to care for [the dependent child]"].)

DISPOSITION

The jurisdiction findings and disposition orders are affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J. ZELON, J.