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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Manuel F.A., a Person Coming  
Under the Juvenile Court Law.

B269926

(Los Angeles County  
Super. Ct. No. DK13009)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MANUEL F.,

Defendant and Appellant;

ERICA A.,

Respondent.

APPEAL from an order of the Superior Court of Los Angeles County, Emma Castro, Judge. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, and Jacklyn K. Louie, Principal Deputy County Counsel, for Plaintiff and Respondent Los Angeles County Department of Children and Family Services.

Jennifer L. King, under appointment by the Court of Appeal, for Respondent E.A.

Manuel F. (Father) and Erica A. (Mother) are the parents of a son Manuel F.A. (Manuel), who was two years old at the time dependency proceedings began in this case. The juvenile court took jurisdiction over Manuel on various grounds alleged by the Department of Children and Family Services (DCFS), including allegations that (1) Father was a current user of methamphetamine, which rendered him incapable of regularly caring for Manuel, and (2) Mother had engaged in a violent altercation with another woman in Manuel's presence. The juvenile court removed Manuel from Father's physical custody and ordered him placed in Mother's home. Only Father appeals the juvenile court's orders, and we consider whether Father can mount a successful challenge to the court's jurisdictional finding and whether the court's removal order was proper.

## I. BACKGROUND

During the proceedings in juvenile court, Manuel was Mother and Father's only child. Manuel, however, has three half-siblings, all on Mother's side: Julian S. (then eight years old), Breanna H. (six years old), and Natalie H. (four years old).<sup>1</sup> Mother and Father first maintained separate homes, but they came to live together with all four children in a home in Long Beach.

In April 2015, DCFS received a referral that Father was selling food stamps for marijuana and smoking marijuana in Manuel's presence. After investigating the referral and the

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<sup>1</sup> The juvenile court presided over separate hearings as to Mother's other children. Only the proceedings involving Manuel are now before us.

children's welfare, DCFS filed an 11-count petition under Welfare and Institutions Code section 300, subdivisions (a), (b), and (j).<sup>2</sup> We will summarize the evidence that is relevant to certain of the subdivision (a) and (b) counts of the petition, with particular emphasis on the evidence pertaining to the subdivision (b) count that alleged Father's use of methamphetamine endangered Manuel's physical health and safety.

*A. Father's Methamphetamine Use*

Count b-4 of the dependency petition alleged that "[o]n 8/7/15, the father was under the influence of methamphetamine while the child was in the father's care and supervision. The child is of such a young age as to require constant care and supervision and the father's illicit drug use interferes with providing the child with regular care and supervision . . . ."

In addition to documenting the referral alleging Father smoked marijuana in Manuel's presence, DCFS reports provided the juvenile court with information concerning Father's use of methamphetamine—including an incident that occurred on August 7, 2015.

On that date, a DCFS social worker visited Mother and Father's home.<sup>3</sup> The social worker first interviewed Mother in the children's bedroom, outside Father's presence. Toward the end of the interview, Father opened the bedroom door and began yelling at the social worker, questioning why there was a need to

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<sup>2</sup> Statutory references that follow are to the Welfare and Institutions Code.

<sup>3</sup> The children were present at the time of the visit.

interview Mother alone. The social worker asked Father to calm down, but he “became irate and continued yelling and gesturing with his hand for [the social worker] to leave . . . .” The social worker did not feel safe and believed Father’s behavior was “explosive.” The social worker told Mother and Father he would be stepping outside, and Father continued to yell and began to follow the social worker to his car until Mother convinced Father to stop. The social worker then drove a short distance away and called the police, who arrived and stabilized the situation.

After the police arrived, the social worker returned to the house and continued interviews with the parents and the children. The social worker told Father he needed to drug test that day. Father did so, and the results were positive for methamphetamine.

DCFS personnel subsequently interviewed Father to discuss his positive drug test and his use of controlled substances. When confronted with the test result, Father initially claimed he did not know what methamphetamine was. When told he should be honest about his drug use, Father admitted he did know what methamphetamine was, but he continued to deny he used the drug.

In a later interview, DCFS again questioned father about his drug use. Father stated he occasionally used marijuana, having last done so in July 2015. DCFS asked Father how it was that he tested positive for use of methamphetamine, and Father continued to claim he did not know. When DCFS asked when was the last time that Father used methamphetamine, Father pointed out his drug test results. DCFS then reminded Father of his statement that he did not know how he tested positive, and

Father responded by telling DCFS the last time he used methamphetamine was in Mexico when he was 16 years old.

After Father's positive methamphetamine test, and while juvenile court dependency proceedings were ongoing, Father enrolled in the New You Center where he attended substance abuse, anger management, and domestic abuse classes. New You Center records indicated he tested negative for drugs on September 4, October 7, and November 13, 2015, as well as January 15, 2016.

*B. Mother's Violent Altercation with an Unrelated Woman*

Count b-5 of the dependency petition alleged that [o]n a prior occasion," Mother "engaged in a violent altercation with an unrelated female, Maria[,] in the presence of the children." Count b-5 further alleged this violent conduct endangered the children's physical health and safety.

Mother admitted she had fought with Maria in the presence of Julian, Breanna, and Natalie. According to Mother, Maria punched Mother in the side of her face and Mother, who was then pregnant with Manuel, fought back. Mother called the police but declined to press charges after the police told her they would arrest both Mother and Maria if she did so. Father confirmed the fight between Mother and Maria had taken place, and Breanna likewise told DCFS she remembered Mother and Maria pulling each other's hair and punching each other.

*C. Domestic Violence between Mother and Father*

Count a-3 of the dependency petition alleged Mother and Father have a history of engaging in violent altercations in the

presence of Breanna. More specifically, count a-3 alleged: “[Father] grabbed the child Manuel from [Mother]. On or about 7/4/15, [Father] pushed [Mother]. [Father] struck the mother’s head. The mother pushed the father. On prior occasions, [Father] struck [Mother’s] body with [Father’s] hands. The mother failed to protect the children in that the mother allowed [Father] to reside in the children’s home and have unlimited access to the children.”

Two DCFS social workers interviewed Julian (Mother’s eldest child) and Breanna (second-eldest) separately at their school. Julian told DCFS that Father had never been violent toward Mother or the children. When Julian was leaving the interview room so the social workers could interview Breanna, Julian told her, “Don’t tell them about (inaudible).” The social worker asked Julian to repeat what he said, but Julian walked away without responding.

The social workers proceeded to interview Breanna and asked if she ever saw Mother and Father get into fights. Breanna said that she had seen her parents fight on “fireworks day.” According to Breanna, Father “grabbed baby” from Mother, Mother and Father pushed each other, and Father then hit Mother on the head while they were fighting and talking about Julian’s father (a man with whom Mother was previously romantically involved). Breanna told the social workers that “[Father] hits [Mother] everywhere with his hand including the mouth and she cries,” and Breanna explained that she “just wanted to say that because that’s bad.”

In a DCFS interview, Mother acknowledged getting into a loud argument with Father on July 4 because Father had learned that Julian’s father wanted to get back together with her.

Mother stated Father had held her by the arms and shook her while yelling. Mother claimed she had not been afraid and understood why he was so mad; she also maintained the July 4 incident was the only time anything like that had happened.

DCFS reports further revealed that a social worker had observed a round blue-colored mark on Mother's cheek on July 8, 2015. At the time, Mother denied the mark was a bruise, stating instead that it was makeup. Father denied he had ever struck Mother.

*D. Physical Abuse of Breanna*

Count a-2 of the dependency petition alleged Father "physically abused the child, Breanna[,] by striking the child's head with [Father's] hand. Such physical abuse was excessive and caused the child unreasonable pain and suffering."

According to an initial DCFS report, Breanna told a social worker that she only felt safe with Mother, not Father, because "if she does not ask for things [Father] hits her 'really hard' in the 'head' with his hand and it hurts." Julian denied Father had ever hit him. The social worker did not observe any marks or bruises on Breanna or any of the other children.

The DCFS social worker again interviewed Breanna on August 7, 2015, the date on which Father became irate at the social worker and tested positive for methamphetamine. During this later interview, Breanna recanted her prior statement that Father hit her when she gets in trouble, as well as her statement that Father hit Mother on her head and other parts of her body (including during the July 4 altercation).



*E. The Juvenile Court's Jurisdiction and Disposition Rulings*

The juvenile court held an adjudication and dispositional hearing and admitted the relevant DCFS reports into evidence. Father presented evidence of the programs he was attending (including his clean drug tests). Father also called Breanna as a witness and she testified in chambers.

Breanna denied Father had ever disciplined her physically or hit Mother. Breanna also denied anyone had told her not to say anything about what happened between Mother and Father on “fireworks day.” Breanna did say she remembered Mother fighting with Maria. She said she liked Father, was not scared of him, and felt safe with him. But when Father’s attorney asked her whether it would be okay if Father came to live with her, Breanna shook her head and said “No.”

The juvenile court found counts a-2 (physical abuse of Breanna), a-3 (domestic violence between Mother and Father), b-4 (use of methamphetamine), and b-5 (Mother’s fight with Maria) of the petition true. The court struck the remaining counts of the petition, including those counts that alleged the same domestic violence between Mother and Father and physical abuse of Breanna under section 300, subdivision (b) rather than subdivision (a). As to the sustained domestic violence count, the court found that what Breanna “told the social workers prior is more credible than what she told the court today.” Although Breanna “denied quickly no corporal punishment” had been used against her or her family, the court thought “there’s a reason why she doesn’t want [Father] to live with [the] family, and that’s because [Father] has used inappropriate corporal punishment to discipline the kids.” As to the sustained allegation concerning

drug use, the juvenile court amended a sentence stating Father had a 19-year history of substance abuse to instead read Father is a current user of methamphetamine. The court recognized Father had enrolled in a drug treatment program for several months, but the court emphasized “Father’s just really getting started in drug abuse counseling.”

Regarding disposition, the juvenile court found by clear and convincing evidence there was a substantial risk to Manuel if released to Father. The court ordered Manuel and his siblings should continue to reside with Mother (on condition that she participate in counseling) and ordered Father not to visit the home. The court ordered Father to participate in substance abuse counseling with random drug testing every week, plus additional counseling programs.

## II. DISCUSSION

Father concedes that Mother’s conduct warranted the juvenile court’s finding of jurisdiction over Manuel. The existence of such an uncontested jurisdictional finding means we need not resolve Father’s challenges to the jurisdictional findings made against him. But Father urges us to exercise our discretion to do so because the jurisdictional findings against him served as the basis for the juvenile court’s dispositional order, which he also challenges. Assuming Father’s challenge to the dispositional order warrants the exercise of our discretion, we hold substantial evidence supports the juvenile court’s finding that he is a current user of methamphetamine and that his use of the drug placed Manuel at substantial risk of serious harm. Because this finding is supported by substantial evidence, we will not discuss the

remaining jurisdictional findings against him.<sup>4</sup> (*In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*).

As to the juvenile court's order removing Manuel from Father's physical custody but allowing the child to remain in Mother's custody, there was no error. The order is legally proper, and Father's perfunctory argument that the dispositional order is unsupported by sufficient evidence is meritless.

*A. The Finding of Juvenile Court Jurisdiction Over Manuel*

Where, as in this case, a dependency petition alleges multiple grounds on which the juvenile court may assert jurisdiction over a minor, we may affirm the juvenile court's finding of jurisdiction if any one of the statutory bases that are enumerated in the petition is supported by substantial evidence. (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72.) "For jurisdictional purposes, it is irrelevant which parent created [the] circumstances" triggering jurisdiction. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1491.) "[A] jurisdictional finding good against

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<sup>4</sup> Mother filed a respondent's brief on appeal that concedes the jurisdictional findings on counts b-4 and b-5 are supported by sufficient evidence but contests the sufficiency of the evidence to support the a-2 and a-3 jurisdictional findings. DCFS has moved to strike the portions of Mother's brief that challenge the juvenile court's jurisdictional findings. It is true that, generally, "a respondent who has not appealed from the judgment may not urge error on appeal." [Citation.]" (*Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439.) However, in light of our disposition of Father's appeal, we deny DCFS's motion as moot.

one parent is good against both,” which is consistent with the dependency law’s purpose of protecting children, not prosecuting their parents. (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397; see also *In re Briana V.* (2015) 236 Cal.App.4th 297, 308.)

The juvenile court found true the allegation that Mother engaged in a violent altercation with another woman in the presence of Manuel’s siblings, and that Mother’s violent conduct endangered the children’s physical health and safety. As Father acknowledges, the children will remain dependents of the court on account of this finding against Mother regardless of how we decide his appeal. We therefore need not consider the merits of his arguments contesting the jurisdictional findings against him.

Although we need not review Father’s arguments on the merits, Father asserts we may exercise our discretion to do so under *In re Drake M.* (2012) 211 Cal.App.4th 754 (*Drake M.*). The panel deciding that case held it would “generally” exercise its discretion to review a challenged jurisdictional finding on the merits, notwithstanding the existence of unchallenged findings against another parent, where “the [challenged] 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’ [citation].” (*Id.* at pp. 762-763.)

Father does challenge the juvenile court’s dispositional order, and that order is partially based on the jurisdictional findings against Father. We accordingly assume that the first of the *Drake M.* factors warrants our discretionary review to determine whether at least one of the jurisdictional findings against Father is supported by sufficient evidence. (*I.J., supra*,

56 Cal.4th at p. 773 [“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”], internal quotation marks and citation omitted.)

Father, as the party challenging the juvenile court’s jurisdictional ruling, bears the burden on appeal to show there was no evidence of a sufficiently substantial nature to support the ruling. (*In re D.C.* (2015) 243 Cal.App.4th 41, 52.) We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the trial court’s findings. (*I.J.*, *supra*, 56 Cal.4th at p. 773.)

Section 300, subdivision (b)(1) authorizes a juvenile court to take jurisdiction over a child where “[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 or guardian to adequately supervise or protect the child . . . .” Here, there was substantial evidence on which the court could find Father’s methamphetamine use posed a substantial risk of serious harm to Manuel.

Manuel was just two years old at the time Father tested positive for use of methamphetamine on August 7, 2015.<sup>5</sup> By that date, Father was already on notice that DCFS was investigating

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<sup>5</sup> A month earlier, Father tested negative for drug use but the test results indicated his sample was “dilute.”

the welfare of Manuel and the other children. In addition, Father's use of methamphetamine on August 7 was not the first time he ever used the drug; by his own admission, he previously used methamphetamine when he was only 16 years old. And perhaps most troubling, on the day that test results showed Father used methamphetamine, he became so enraged at a social worker that the social worker felt compelled to call the police after Father chased him out of the home. These facts (not to mention Father's separate admission to using marijuana) are sufficient evidence to warrant the juvenile court's finding that Father was a current user of methamphetamine and that his drug use placed Manuel at substantial risk of serious harm. (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1384-1385; *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216, 1219 [substance abuse by a parent of a child of "tender years" is prima facie evidence of that parent's inability to provide regular care resulting in a substantial risk of harm].)

We do recognize Father presented evidence that he had enrolled in a substance abuse program and had tested negative for drugs on several subsequent occasions. However, the juvenile court aptly observed: "Father's just really getting started in drug abuse counseling." Indeed, even as late as October 2015—just three months before the jurisdiction hearing and *after* Father had enrolled in substance abuse counseling—Father continued to deny using methamphetamine and claimed he did not know how he could have tested positive. Father's continued denial of methamphetamine use demonstrates the risk to Manuel had not sufficiently dissipated by the time of the jurisdiction hearing. (See *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197 ["One cannot correct a problem one fails to acknowledge"]; see also *In re*

*Kristin H.* (1996) 46 Cal.App.4th 1635, 1654 [parent who denies drug use in the face of overwhelming evidence to the contrary “exhibit[s] the classic symptoms of the substance abuser”].)

*B. The Dispositional Order Removing Manuel from Father’s Custody*

Section 361, subdivision (c)(1) governs a juvenile court’s decision on whether to remove a child from the custody of his or her parents. The statutory provision states removal is only justified where a juvenile court finds, by clear and convincing evidence, that “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s or guardian’s physical custody.” (§ 361, subd. (c)(1).) “A removal order is proper if it is based on proof of (1) parental inability to provide proper care for the minor and (2) potential detriment to the minor if he or she remains with the parent.” (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1163 [focus of the statute is on averting harm to the child].)

Father contends the juvenile court exceeded its authority in removing Manuel from Father’s custody. Specifically, Father argues “that a dispositional order which purportedly removes a child from one custodial parent while leaving the child in the custody of another custodial parent is an act in excess of the court’s jurisdiction.” A recent Court of Appeal decision rejected

this argument, and we do so for the same reasons.<sup>6</sup> (*In re Michael S.* (2016) 3 Cal.App.5th 977, 980, 984.)

Father additionally makes a perfunctory argument that the juvenile court's order removing Manuel from his custody is supported by insufficient evidence. Our analysis of the issue is commensurate with Father's presentation of the contention. Suffice it to say that Father's explosive confrontation with the social worker on August 7, 2015, his positive methamphetamine test result that same day, and his subsequent responses to DCFS when asked to explain the test result are substantial evidence supporting the juvenile court's dispositional order. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880.)

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<sup>6</sup> The cases cited by Father are inapposite. (See, e.g., *In re N.S.* (2002) 97 Cal.App.4th 167.) Unlike the circumstances in the cases Father cites, where the juvenile court removed a child from the custody of *both* parents and then nevertheless placed the child with one of the parents, the juvenile court here removed Manuel only from Father's custody and placed Manuel with Mother.



DISPOSITION

The juvenile court's orders are affirmed.

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BAKER, J.

We concur:

TURNER, P.J.

KRIEGLER, J.