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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re KAH. P. et al., Persons
Coming Under the Juvenile
Court Law.

B284876
(Los Angeles County
Super. Ct. No. DK21904)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

A.H.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Kristen Byrdsong, Commissioner. Affirmed in part and reversed in part.

Elizabeth C. Alexander, 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.

In this dependency case (Welf. & Inst. Code, § 300 et seq.),¹ A.H. (Mother) appeals from the jurisdiction findings and disposition order, challenging the sufficiency of the evidence supporting the findings against her under section 300, subdivisions (a) and (b), and the removal of her then one and two-year-old sons from her custody. For the reasons explained below, we reverse two of the jurisdiction findings against Mother, affirm one, and affirm the removal order.

BACKGROUND

Detention²

This family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) on January 14, 2017, after Mother called the police three times between about 12:00 and 3:00 a.m. to report verbal and physical altercations with her boyfriend K.P. (Father), at the motel where the homeless couple was staying with one of their two sons. According to the police report and the detention report, Mother made the first call to the police because she and Father were arguing and she wanted him to leave the motel room. Officers

¹ Further statutory references are to the Welfare and Institutions Code.

² The following facts are set forth in the March 2, 2017 Detention Report unless otherwise noted.

responded, and Father left voluntarily. Father returned to the motel to retrieve his belongings, and Mother called the police a second time. Officers responded again and monitored the situation until Father left “peacefully,” as stated in the police report. The second time Father returned to the motel, he punched Mother in the mouth, prompting her to call the police a third time.

According to the police report, during the third and final call Mother explained that when Father returned the second time, he banged on the motel room window, demanding his shoes. He was angry and tore off the window screen. She handed him the shoes through the window, and he punched her in the mouth, causing her to bleed. She reported he left the scene on a white bicycle. When officers arrived at the motel room, they observed a cut on Mother’s lip and a small bump on her forehead. She told them Father apologized for hitting her and she forgave him because she knew he was having a hard time dealing with the recent loss of his father. She denied he was present in the room, but an officer observed a white bicycle. Officers searched the room and found him hiding in the shower stall and took him into custody without incident. Mother cried and begged the officers not to arrest him. As they led Father out, the couple kissed. Mother explained she let Father back into the room after he punched her because he apologized and begged to come in.

The couple’s 11-month-old son, Kas. P., was asleep on the bed each time officers responded to the motel. Their other son, 21-month-old Kah. P., was staying with his maternal great-grandmother. After the incident, Mother declined an emergency protective order and left the motel with Kas. P., telling officers she was going to stay with her aunt. An officer referred the

matter to DCFS and told a social worker Father had been drinking prior to the incident but did not appear drunk, and Mother “did not appear to be under the influence.” The officer also told the social worker about a cut on Father’s knuckle that the officer believed resulted from his knuckle coming into contact with Mother’s teeth when he punched her.

Later the same day, the social worker interviewed Father in jail, where he was being held for spousal battery. Father explained that he, Mother, and Kas. P. checked into the motel the day before the incident. They were homeless and stayed with friends or Mother’s aunt, and occasionally rented a motel room so they could be alone. They brought a bottle of Courvoisier cognac to the motel because they planned to play a drinking game. At some point, Father went outside the motel room and smoked marijuana. About 1:00 a.m. on January 14, 2017, Father’s mother called and said his 89-year-old father had passed away. Father “was devastated because he and his father were very close.” Mother decided to go get food and asked him not to drink any alcohol until she returned. He drank 11 shots of Courvoisier while she was gone and fell asleep with Kas. P. After she came back, she touched him to wake him up. He became “startled” and pushed her, causing her to “ ‘f[a]ll over a chair and hit herself on the window that broke.’ ” He denied punching Mother or intending to hit her and described the incident as an accident, stating, “ ‘That was my fault; she just wanted me to wake up and eat. I tripped out. I was drunk.’ ” He went to a friend’s house and Mother called him and asked him to return to the motel room because she did not want to be there alone, and she acknowledged “ ‘it was an accident and a mistake.’ ” Father admitted officers responded to the motel room three times, but he

denied he and Mother had argued. He told the social worker he cut his knuckle when he punched the wall in jail. He planned to reunite with Mother when he was released from jail or stay with the children's paternal grandmother.

Over a four-day period, DCFS attempted to locate Mother and was unsuccessful.

On January 16, 2017, a social worker visited the maternal great-grandparents' home where Kah. P. was staying. The child appeared appropriately groomed with no signs of abuse. The great-grandmother explained that Mother occasionally left Kah. P. in her care, and she had not seen Mother in four days. She denied knowledge of domestic violence between Mother and Father or abuse/neglect of the children. In a subsequent interview on January 18, 2017, the great-grandmother "admitted that she uses marijuana patches" for back pain.

On January 17, 2017, a social worker returned to the great-grandparents' home and spoke with the great-grandfather. The great-grandmother and Kah. P. were not home. The great-grandfather denied Mother and Father lived in the great-grandparents' home and said he was unsure where they lived. He admitted he used marijuana to relax, but stated he did not use it in the children's presence and was never under the influence when he assisted in caring for the children. He usually smoked marijuana outside the home. The social worker did not believe he was under the influence at the time of the interview and did not smell marijuana or observe drug paraphernalia in the home. The great-grandfather denied knowledge of domestic violence between Mother and Father.

Also on January 17, 2017, the social worker spoke with the property manager at the apartment building where the great-

grandparents lived. She told the social worker she had not seen Mother and Father for about two weeks, but believed they had been living with the great-grandparents for more than a year. The apartment was a senior living home and Mother, Father, and the children were not permitted to live there. The property manager had “received a lot of complaints from neighbors regarding loud noise, screaming and yelling and kids crying.” Neighbors also complained about marijuana odor coming from the great-grandparents’ apartment. The property manager believed it was Mother and Father screaming and yelling and smoking marijuana, and not the great-grandparents.

A social worker spoke with a police sergeant on January 17, 2017, and learned that Mother had a warrant for her arrest in the amount of \$44,000. The sergeant did not have any further details about the warrant.

On January 18, 2017, a social worker visited the paternal grandmother’s home. She stated she was aware that Mother and Father argued with each other and used marijuana. She never witnessed a physical altercation between Mother and Father and did not believe they used marijuana in the children’s presence. She believed Mother and Father “need[ed] services to assist in getting along with each other.” A paternal aunt also stated Mother and Father needed services to address their verbal altercations. The aunt believed “mother ha[d] a problem managing her anger.” Another paternal aunt informed the social worker that on the day of the incident, she picked up Mother from the motel and dropped her off at the jail because Mother wanted to visit Father.

On January 18, 2017, while visiting the maternal great-grandmother’s home, a social worker spoke with Mother by

telephone when Mother called the great-grandmother. Mother was at the criminal court, attempting to obtain information about Father's case, and agreed to meet with the social worker at a DCFS office later that day. In a subsequent telephone call, the social worker emphasized the importance of Mother appearing for the meeting. Mother stated she wanted to wait for Father's case to be called, and she would come to the DCFS office after. She informed the social worker she did not want to press charges against Father.

At the January 18, 2017 hearing in Father's criminal case, the court issued a protective order against Father as to Mother only (not the children), set to expire on January 18, 2020.

Mother brought Kas. P. to the DCFS office on January 18, 2017. The child appeared well groomed, bonded with Mother, and free from signs of abuse or neglect. Mother told the social worker Kas. P. was diagnosed with sickle cell disease and was supposed to take Penicillin daily.

The social worker interviewed Mother about the allegations in the referral. She stated she called the police the first time because Father "left the hotel very upset" after he learned of his father's death, and she feared he would go to his mother's home and "attempt to attack" his sister, whom he blamed for his father's death.³ Father returned to the motel room intoxicated and drank six more shots of Courvoisier. They argued, and Father left the room again. Mother yelled out the window "that she didn't care that [the paternal grandfather] died." As she

³ According to Mother, the children's paternal grandfather had stage 4 cancer, and one of the paternal aunts used to smoke around him.

handed Father his shoes through the window, he punched her nose with a closed fist and her nose bled. Father left again. When he came back later he was calm. A couple of minutes after she let him back into the room, officers arrived. She lied and told them he was not there because “she felt sorry for [him] and did not want him to get arrested.” Father apologized and kissed her before officers took him away. She called one of his sisters to pick her up and take her to the jail to visit him.

Mother explained she believed the domestic violence incident was “partially her fault” because she made the comment about his father’s death when he “appeared to be very emotional.” She admitted she and Father had verbal altercations in the past, but she claimed the physical altercation was “an isolated incident” that occurred because Father “drank too much that night due to his father passing.” She declined the emergency protective order at the time of the incident because “she was not scared of [F]ather and felt that [F]ather would never harm her and the children.” She acknowledged the criminal court issued a protective order earlier that day, prohibiting Father from contacting her.

Mother denied drinking alcohol on the night of the incident but stated she and Father had planned to play a drinking game before Father learned about his father’s death. She admitted she smoked marijuana outside the hotel room while Kas. P. slept on the bed. She also told the social worker she and Father usually smoked marijuana at night, outside on the porch, when the children were sleeping. The social worker expressed concern about Mother “leaving [the] child unattended on the motel bed when [she] stepped outside to smoke marijuana” and about Mother and Father “being under the influence and the risk due to

the children's young tender age." Mother said she understood the social worker's concerns and agreed to submit to a drug and alcohol test. According to the social worker, Mother did not appear to be under the influence during the interview.

Mother told the social worker the "majority of the time" she stayed at the children's maternal great-grandparents' home. She understood, however, they could be evicted for allowing her to stay there. For that reason, on other occasions, she stayed with a family friend whom she called "aunt" and described as a mother figure to her. She stated she could not afford to pay rent on a residence of her own.

On January 19, 2017, an employee from the "Central Trial Office" contacted Mother and discussed the terms of the criminal protective order with her. Mother stated she would "abide by" the protective order. Apparently Father was out of jail. Mother said she had not had contact with him and was unaware of his whereabouts.

On January 31, 2017, Mother told a social worker she still had not had contact with Father and did not have an address for him. She stated his relatives told her he had left town.

On February 10, 2017, Mother submitted to an on-demand drug and alcohol test, which came back positive for marijuana.

On February 24, 2017, DCFS obtained a court order removing the children from Father.

On March 3, 2017, DCFS filed a dependency petition under section 300, based on allegations regarding Mother and Father's physical altercation (counts a-1 and b-1), Mother's marijuana abuse (count b-2), and Father's marijuana abuse and use of alcohol while caring for and supervising Kas. P. (count b-3). In the detention report, DCFS recommended the children remain

detained from Father and be maintained in Mother's care. DCFS explained: "While the parents do not appear to have good insight into the issues related to domestic violence, mother has been cooperative with DCFS and maintains she has abided by the criminal protective order. It appears that with appropriate services and supervision in place, the children can be safely maintained in the mother's care. [¶] Furthermore, mother minimizes father's behaviors and mother has had contact with him prior to the Restraining Order and it is suspected she may still have contact with him. Mother is not enrolled in any services, is difficult to locate and has unstable housing. Mother is in need of intensive services in order to ensure her ability to protect and provide for the children."

In a last minute information for the court, dated March 3, 2017, DCFS reported Mother was arrested on the outstanding warrant (charge unknown) on February 27, 2017, according to the children's maternal great-grandmother.⁴ Mother arranged for the great-grandmother to care for Kah. P. DCFS did not believe this was a suitable arrangement as the great-grandparents both had "extensive criminal history" and children were not permitted to reside in their senior living residence. The great-grandmother believed the family friend or "aunt," as Mother called her, was caring for Kas. P. A social worker spoke with three of Father's sisters, who reported Mother and Father were having contact with each other, and Mother was allowing

⁴ In the subsequent May 4, 2017 Jurisdiction/Disposition Report, DCFS stated Mother was then on summary probation for battery, and Father was on summary probation for the domestic violence conviction.

Father to have unsupervised visits with Kas. P. The social worker spoke with Father on March 2, 2017. He stated the last time he had contact with Mother (or Kas. P.) was on January 18, 2017, when Mother was served with the criminal protective order. He denied knowing Kas. P.'s whereabouts. DCFS recommended the juvenile court detain the children from Mother based on "Caretaker Absence/Incapacity" due to Mother's incarceration and Mother and Father's violation of the criminal protective order.

Mother and Father were present at the March 3, 2017 detention hearing. In arguing against detention, Mother's counsel asserted that according to Mother, she only had contact with Father on one occasion when he came unannounced to pick up some of his belongings. Counsel argued the paternal aunts' statements about multiple contacts were not credible because they held a grudge against Mother for causing Father to be arrested and sent to jail. The children's counsel argued in favor of detention based on the physical altercation and Mother's "minimization of the allegations." The juvenile court detained the children from Father and Mother, agreeing with the children's counsel about Mother's minimization of the allegations. The court ordered reunification services and separate, monitored visitation for the parents.

Jurisdiction⁵

The children were placed in separate foster homes because DCFS determined Kas. P. needed a "medical placement."

⁵ The following facts are set forth in the May 4, 2017 Jurisdiction/Disposition Report unless otherwise noted.

On March 29, 2017, Mother failed to show for an on-demand drug test. On March 31, 2017, Father missed his drug test. On April 20, 2017, DCFS enrolled the parents in a random drug testing program.

On April 25, 2017, the dependency investigator interviewed Father. He stated he did not remember much about the January 14, 2017 incident because he drank a fifth of a bottle of Courvoisier and it was “‘all a blur.’” He acknowledged he and Mother had a history of verbal arguments, but denied the arguments became physical. Father described their arguments as. “‘You know the usual I hate you, I hate you too. One of us storms out and comes back 2-3 hours later still with an attitude but better.’”

Regarding the substance abuse allegations, Father acknowledged he had had a drinking problem since he was 12 years old and had been going to Alcoholics Anonymous meetings. He began smoking marijuana at age 13 and “‘started smoking heavily when [he] graduated from high school.’”⁶ In describing his and Mother’s marijuana use, he stated: “‘We used to smoke in the morning, evening or night. We big smoke but everyone does.’” Later in the interview, when asked to estimate how much he and Mother were using marijuana, he stated: “‘We smoked in the morning. Lunches, if we’re going out like to Dave and Buster. One of the down sides of smoking is that you can’t eat unless you smoke. We smoke in the evenings.’” He indicated he smoked marijuana in motel rooms when the children were present, but “‘would not be in the children’s faces.”

⁶ He was 24 years old at the time of the interview.

On April 26, 2017, the dependency investigator interviewed Mother about the allegations. Mother acknowledged she and Father “‘argue[d] a lot,’” but denied Father hit her, other than the incident on January 14, 2017. She continued to place some blame on herself for Father punching her. She told the investigator: “‘I was kind of wrong in that situation in some parts. I have a smart mouth. With me knowing he felt a certain way because his dad died and he’d been drinking I should have been more considerate. I was being a bi--- and I need to work on that. A lot of bad decisions were made that day.’”

Mother denied a history of substance *abuse*, but admitted she had been smoking marijuana for four years, since she was 17 years old. She had a medical marijuana license. She explained: “‘I smoke weed every night because my back be hurting. I smoke weed to go to sleep. I don’t have a reason to justify my use. I had 2 kids back to back and my shoulder dislocates.’” She said she usually smoked after her sons were asleep. She did not believe her marijuana use affected her ability to parent her then one and two-year-old boys. She stated: “‘If I hear my baby cry, I lose my high. In certain situation, you can lose your high but I’ve never been that high. Cancer patients smoke weed. People have full fledged jobs smoking weed so it can’t be that impairing.’”

Mother denied that she or anyone else smoked in the boys’ presence. When she stayed at the children’s maternal great-grandparents’ apartment, she and Father smoked in the bathroom with the door closed and the window open. The great-grandfather smoked marijuana outside the apartment. At her “‘auntie’s house’” (the family friend), she and Father smoked outside. At motels, they smoked outside or in the bathroom. She added, “‘We use in the bathroom a lot.’” The investigator told

Mother when Kah. P. was detained from the great-grandparents' home, his hair had "a distinctly strong odor of marijuana."⁷ Mother responded: "I can't control what happens at other people's house when I'm not there. When Kah[.] [P.] was taken away I was in jail and he was at my grandma's house so I don't know.'"

DCFS recommended the juvenile court sustain the petition and remove the children from Mother and Father and order them to "engage in a full substance abuse treatment program" and domestic violence and parenting programs. DCFS reported the parents had been visiting the children.

Jurisdiction/Disposition Hearing

Mother and Father were present at the May 10, 2017 jurisdiction/disposition hearing. The juvenile court received DCFS reports into evidence and Mother testified.

Mother stated she felt safe allowing Father back into the motel room after the January 14, 2017 domestic violence incident. She felt bad that she had "yell[ed] things out the window to hurt his feelings," as he was walking away, before the assault. She acknowledged, however, that her actions did not excuse his physical violence. Mother denied contact with Father, other than court appearances.

Regarding her marijuana use, Mother stated she did not smoke marijuana in her children's presence or when the children were awake. In describing the effects of marijuana on her, Mother testified: "[M]y high can go down easily. If I get irritated, my high will go away. If my baby cry, my high will go

⁷ The foster parent informed DCFS that it "took several times of hair washing to diminish the odor."

away. It's not like controlling. It's not body controlling. It doesn't take over everything. [¶] It just relaxes you and puts you in a sedative relaxed mood." Mother stated she kept her marijuana in her purse. When she stayed at the children's maternal great-grandparents' house, she placed her purse on a hook in a closet, behind a closed door, where the children could not reach it.

The juvenile court heard argument in favor of dismissing the petition from Mother's and Father's counsel, and in favor of sustaining the petition from DCFS's and minors' counsel. The juvenile court sustained all allegations in the petition. Thereafter, the court heard argument on disposition and declared the children dependents of the court and removed them from Mother's and Father's custody. The court ordered reunification services and monitored visitation for both parents.

DISCUSSION

Jurisdiction Findings

Mother challenges the sufficiency of the evidence supporting the jurisdiction findings against her. DCFS argues we need not reach this issue because even if we reverse the jurisdiction findings as to Mother, jurisdiction over the children will continue based on the unchallenged jurisdiction findings against Father. As Mother points out, jurisdiction findings against her could prove prejudicial in future dependency, family law, or other matters. Accordingly, we address Mother's challenge to the jurisdiction findings.

"In a challenge to the sufficiency of the evidence to support a jurisdictional finding, the issue is whether there is evidence, contradicted or uncontradicted, to support the finding. In making that determination, the reviewing court reviews the record in the

light most favorable to the challenged order, resolving conflicts in the evidence in favor of that order, and giving the evidence reasonable inferences. Weighing evidence, assessing credibility, and resolving conflicts in evidence and in the inferences to be drawn from evidence are the domain of the trial court, not the reviewing court.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451.)

Count a-1

Mother contends there is insufficient evidence to support jurisdiction under section 300, subdivision (a). We agree.

Jurisdiction under section 300, subdivision (a), is appropriate where “[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 or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm. . . .” (§ 300, subd. (a).)

The count a-1 finding against Mother states: “On 01/14/2017, the children, Kah[.] P[.] and Kas[.] P[.]’s mother, A[.]H[.], and the children’s father, K[.]P[.], engaged in a violent altercation in the presence of the child Kas[.] [P.] in which the father struck mother’s face with the father’s fists, inflicting bleeding to the mother’s nose and mouth. The mother failed to protect the children in that she allowed the father to have unlimited access to the children. Such violent conduct on the part of the father against the mother, and the mother’s failure to

protect the children, endangers the children's physical health and safety, and places the children at risk of serious physical harm, damage, danger and failure to protect."

There is no substantial evidence in the record indicating Mother and Father ever engaged in an altercation during which there was a substantial risk one of the children would be physically harmed during the altercation. The record reveals one incident of physical violence between Mother and Father during which Kas. P. could not have been physically harmed as he slept on the bed inside the motel room while Father, standing outside the motel, reached his arm through the window and struck Mother in the face as she leaned toward the window.

This is not a case like *In re Giovanni F.* (2010) 184 Cal.App.4th 594, for example, where the father hit and choked the mother while driving with the child in the car, and subsequently struggled with the mother over the car seat while the child was still in it. (*Id.* at pp. 600-601.) There, the child could have been harmed by father causing a car accident or striking the child during his physical confrontations with Mother. Here, there is no evidence the children were ever placed in a situation where one could have been physically harmed during a violent altercation between Mother and Father.

Jurisdiction finding a-1 is reversed for lack of substantial evidence.

Count b-1

Mother contends there is insufficient evidence to support jurisdiction finding b-1, which is identical to finding a-1, quoted above. We agree.

Jurisdiction under section 300, subdivision (b), requires proof "[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” (§ 300, subd. (b).) In deciding whether there is a substantial risk of serious physical harm, within the meaning of section 300, subdivision (b), courts evaluate the risk that is present at the time of the jurisdictional hearing. “While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824, abrogated in part on another ground in *In re R.T.* (2017) 3 Cal.5th 622, 627-629.)

“Physical violence between a child’s parents may support the exercise of jurisdiction under [section 300,] subdivision (b) but only if there is evidence that the violence is ongoing or likely to continue and that it directly harmed the child physically or placed the child at risk of physical harm.” (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717; *In re T.V.* (2013) 217 Cal.App.4th 126, 134 [“Exposing children to recurring domestic violence may be sufficient to establish jurisdiction under section 300, subdivision (b)”].)

As discussed above, here the record reveals one incident of physical violence between Mother and Father. We certainly do not trivialize the incident. Any domestic violence is a serious matter and, as here, a criminal matter. But a finding that the violence is ongoing or recurring is speculative without additional evidence.

Jurisdiction finding b-1 is reversed for lack of substantial evidence.

Count b-2

Mother contends there is insufficient evidence to support jurisdiction finding b-2, which states: “The children, Kah[.] P[.] and Kas[.] P[.]’s mother, A[.]H[.], has a history of substance abuse, and is a current abuser of marijuana, which renders mother incapable of providing regular care for the children. On 02/10/17, the mother had a positive toxicology screen for marijuana. On prior occasions, the mother was under the influence of marijuana while the children were in the mother’s care and supervision. The children 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 and damage.” We disagree with Mother’s contention.

“The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child.” (§ 300.2.)

Here there is substantial evidence Mother abused marijuana, rendering her incapable of providing regular care and supervision of a one-year-old and a two-year-old child. According to Father, he and Mother sometimes smoked marijuana morning, noon and night. Mother admitted she was “high” during times the children were under her care and supervision, but indicated she would spontaneously lose her high if the children needed her. The record shows on the night the domestic violence incident occurred, Mother left Kas. P. unattended on the bed in the motel room while she went outside to smoke marijuana. Kah. P. was

exposed to so much marijuana smoke at the maternal great-grandparents' home that his caregiver had to wash his hair multiple times to eliminate the odor. Mother insists that was not her fault because the child was detained from the great-grandparents' home while she was incarcerated. But Mother conceded she mainly stayed at the great-grandparents' apartment and smoked marijuana inside the home in the bathroom. Where children are of " 'tender years' " like the children in this case, "the finding of substance abuse is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of physical harm." (*In re Drake M.* (2012) 211 Cal.App.4th 754, 767.)

Jurisdiction finding b-2 is affirmed.

Removal from Mother

Mother challenges the sufficiency of the evidence supporting the portion of the May 10, 2017 disposition order removing Kah. P. and Kas. P. from her custody.

A juvenile court may take a dependent child from the physical custody of his parent where "[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 based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] '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.’ [Citation.] The court may consider a parent’s past conduct as well as present circumstances. [Citation.] [¶] Before the court issues a removal order, it must find the child’s welfare requires removal because of a substantial danger, or risk of danger, to the child’s physical health if he or she is returned home, and there are no reasonable alternatives to protect the child. [Citations.] There must be clear and convincing evidence that removal is the only way to protect the child.” (*In re N.M.* (2011) 197 Cal.App.4th 159, 169-170.)

“Whether the conditions in the home present a risk of harm to the child is a factual issue” to which “we apply the substantial evidence test.” (*In re N.M., supra*, 197 Cal.App.4th at p. 170.) Accordingly, “we review the evidence most favorably to the court’s order—drawing every reasonable inference and resolving all conflicts in favor of the prevailing party—to determine if it is supported by substantial evidence. [Citation.] If it is, we affirm the order even if other evidence supports a contrary conclusion.” (*Id.* at p. 168.)

The removal order is supported by substantial evidence. As set forth above, the children were of tender years and Mother’s marijuana abuse rendered her incapable of providing regular care and supervision. She showed no insight regarding her marijuana use, claiming her children’s cries would automatically eliminate her high, and refusing to entertain any suggestion that she should stop using. Moreover, Mother took no responsibility for what occurred when she dropped her children off at their maternal great-grandparents’ home, stating she could not control when other people smoked marijuana in Kah. P.’s presence. Removal was appropriate to protect these young children.

DISPOSITION

Jurisdiction findings a-1 and b-1 are reversed, as to Mother only. All other jurisdiction findings and the disposition order are affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.