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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re ANTHONY S. et al., Persons
Coming Under the Juvenile Court
Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

GUILLERMINA S.,

Defendant and Appellant.

B285510
(Los Angeles County
Super. Ct. No. DK21141)

APPEAL from orders of the Superior Court of Los
Angeles County, Philip Soto, Judge. Affirmed.

Megan Turkat Schirn, under appointment by the Court
of Appeal, for Defendant and Appellant.

Mary Wickham, County Counsel, R. Keith Davis,
Assistant County Counsel and Sally Son, Deputy County
Counsel, for Plaintiff and Respondent.

Appellant Guillermina S. (Mother), mother of three boys, Anthony S., J.S. and I.M., appeals the juvenile court's jurisdictional order asserting jurisdiction under Welfare and Institutions Code section 300, subdivisions (b)(1) and (d), based on the unhygienic condition of the family home and Mother's failure to protect the children from her husband, Louis S., who used drugs and had a conviction for continuous sexual abuse of a minor.¹ In her opening brief, Mother contends there was no substantial evidence to support the findings that the children were at risk as a result of the condition of the family home or Louis's conviction for sexual abuse, but does not address the finding that Louis's long-time drug abuse posed a risk to her sons.

Because the jurisdictional finding that the children were at risk from Louis's drug abuse supports the court's assertion of jurisdiction over the children, we need not address the merits of Mother's challenges to the remaining

¹ The children's fathers did not appear in the proceedings below and are not parties to this appeal. Undesignated statutory references are to the Welfare and Institutions Code.

two jurisdictional findings. Accordingly, we affirm the juvenile court's jurisdictional order.²

FACTUAL AND PROCEDURAL BACKGROUND

The Los Angeles County Department of Children and Family Services (DCFS) received a referral for the family in March 2016, alleging that stepfather Louis S. was buying drugs for himself with the support money Mother received for the children, and was providing drugs to Mother's adult child, Luis H. At the time, Anthony was 16, J. was 14 and I. was nine.³ When the caseworker arrived at the family home

² Mother also appealed the court's dispositional order finding that remaining in Mother's custody would create a substantial risk of detriment to the children's safety, protection and physical and emotional well-being, and that there were no reasonable means to keep them safe without removing them from her home. While this appeal was pending, however, we were informed that the juvenile court had placed the children with Mother, and granted respondent's motion to dismiss the appeal of the dispositional order as moot.

³ There had been multiple allegations concerning Mother and her male partners over the years. In 2005, Luis, a minor at the time, was allowed to go to school with untreated burns from spilling hot soup on his legs. The referral was considered substantiated for general neglect because Mother had failed to obtain medical treatment. In 2008, an anonymous caller said Jose M., Mother's then boyfriend and the father of I., was hitting the children. In 2009, a caller said Mother was hitting the children. Both the 2008 and 2009 allegations were deemed unsubstantiated because the children denied being hit. In 2010, it was reported that Anthony was coming to school in a very
(*Fn. is continued on the next page.*)

to investigate, she found the home messy and disorganized, particularly the boys' rooms, which smelled of urine. The boys' clothing and bed linens were dirty. The boys themselves had noticeable body odor. Mother and Louis denied using drugs. The boys denied seeing them use drugs, and denied any other form of abuse. Mother and Louis agreed to drug testing, but delayed doing so. In June, Louis admitted using cocaine or methamphetamine as a "one-time recreational thing" prior to testing positive for amphetamines and methamphetamine. He admitted having a history of drug use and drug offenses, but claimed to have completed a drug treatment program. Mother said she was the boys' primary caregiver, and that Louis only helped her transport them to and from school. DCFS did not seek to detain the children at that time, but continued to monitor the family.

unhygienic condition. Mother said it was because he wet the bed at night, but she did not seem to be taking any action to address the problem. The allegation was substantiated, and the family received voluntary services in 2011. In 2012, there was a report that the children had been locked in their bedroom and that incidents of domestic violence had taken place between Mother and an unknown male. Mother reported that her boyfriend was responsible for locking the children in their room, and that she had ended the relationship. Later in 2012, a caller reported Louis hit J. repeatedly and called him names. Although the allegation of physical abuse was found to be unsubstantiated, Luis (still a minor at the time) and Anthony were referred to mental health support services, and J. and I. were referred to the Regional Center. J. began receiving special education services.

In late 2016 and early 2017, the caseworker spoke to school personnel and learned there was no record that Anthony was attending school and that J. and I. were frequently absent or tardy. I.'s teacher reported that I. often came to school dirty, having body odor and unwashed clothing. In January 2017, Father's former employer reported that she sometimes fed the children lunch because they seemed hungry. The children had reported to her that they were locked in their room for two days without food because Louis was using the money intended for their support to buy drugs. Father's employer also had overheard Luis and Anthony talking about getting drugs from Louis, and saw Anthony smoking a pipe.⁴

That same month, January 2017, Louis again tested positive for amphetamines and methamphetamine, and the caseworker learned that he was a registered sex offender, the result of a 1995 conviction for continuous sexual abuse of a child.⁵ The caseworker re-interviewed the boys. All three boys denied physical or sexual abuse, but said they were fearful of Louis. J. and I. continued to deny observing either Mother or Louis consume drugs. Anthony said he had witnessed Louis using drugs. When asked if they had ever been locked in their rooms and denied food, J. said "[y]es,"

⁴ Anthony denied using drugs.

⁵ The underlying facts of the offense are not in the record. Louis also had a number of drug-related offenses on his record, and was on probation for fraud.

but was unable to elaborate.⁶ I. equivocated. Anthony denied it. When asked if they wanted to continue living with Mother and Louis, both J. and I. said “no.” The boys’ bedrooms were filthy and infested with cockroaches. There was cat feces on a table in the living room.

The caseworker asked if Mother, who suffered from diabetes and had recently undergone surgery to have part of her foot amputated, was willing to ask Louis to move out, and if she would be able to care for herself and the children without him. Mother said she could not ask Louis to move out because she relied on his care. She agreed to have the boys temporarily placed with a maternal aunt. At the January 20, 2017 detention hearing, the court ordered the boys detained from Mother.

The section 300 petition, filed January 20, 2017, alleged in paragraph b-1 that Mother created a “detrimental and endangering” home environment by allowing Louis, “a current user of amphetamine and methamphetamine” to reside with her and the children and to provide for their care and supervision. It alleged in paragraphs b-2 and d-2 that Mother created a “detrimental and endangering” home environment by allowing Louis, “a [r]egistered [s]ex [o]ffender” with “a history of a criminal conviction of

⁶ The caseworker later concluded that J. was unable to fully comprehend questions asked of him or provide coherent answers due to his developmental delays, partial deafness and speech impediment.

[c]ontinuous [s]exual [a]buse of a [c]hild,” to reside with her and the children and to provide for their care and supervision. Finally, it alleged in paragraph b-3 that the condition of the home -- “filthy and unsanitary . . . , including cat feces on a table, trash and dirty clothes on the floor, and an infestation of roaches on the ceiling” -- and the typical condition of the boys -- “dressed in dirty clothes and emit[ting] a foul odor” -- endangered the children’s physical health, safety and well being, and placed them at risk of serious physical harm and damage.

Interviewed prior to the jurisdictional/dispositional hearing, Mother blamed the boys for the state of their bedrooms at the time of the detention, saying she expected them to clean their rooms themselves. She said the remainder of the home would have been cleaner had the caseworker not “show[n] up out of nowhere.” Mother said Louis must have been ingesting drugs outside the home, because she was unaware he was using. She knew Louis was a registered sex offender, but did not know the reason. She said he was her only source of help, and that he took care of the boys “for months at a time” when she was hospitalized. Louis admitted using drugs “on and off” for 40 years, and said he was currently using, but not “every day.” He said he would move out of the home if DCFS required it, but intended to stay nearby in his car in case Mother needed him. The children continued to deny abuse of any kind. They wanted to return to Mother. Anthony, who had been diagnosed with diabetes after the detention and hospitalized

while his blood sugar levels were brought under control, said Mother needed his help. The maternal aunt complained that Mother brought the children, including Anthony, fast food when she visited. Just prior to the hearing, the caseworker visited Mother in her home and found it had been cleaned.

At the March 9, 2017 hearing, the court asked for argument on the allegation that the boys were at risk of sexual abuse. Counsel for DCFS argued that although the boys denied having been sexually abused, the presumption of section 355.1 permitted the court to find they were in danger of such abuse. Counsel for Anthony submitted on the recommendations of the caseworker's report that the boys be suitably placed and that Mother have family reunification services. She asked that Anthony be allowed unmonitored visitation. Counsel for the younger boys also submitted on the caseworker's recommendations, but did not recommend unmonitored visitation. Counsel for Mother pointed out that Louis had lived with the family for many years, that the family had been the subject of multiple investigations by DCFS, and that the caseworkers had uncovered no evidence that Louis had engaged in sexual abuse.

The court found all the allegations of the petition true. The court found jurisdiction appropriate under section 300, subdivisions (b) and (d). The court instructed DCFS to address whether the children could be returned to Mother with services in place, and continued the dispositional portion of the hearing.

At the end of March 2017, Mother told the caseworker that Louis had moved out and that she did not know where he was. She said her adult son Luis was home to assist her. The caseworker expressed concern about the possibility that Luis was using drugs and about Mother's failure to obtain the training she needed to assist Anthony to control and treat his diabetes.

At the March 30, 2017 dispositional hearing, the parties stipulated that if called, Mother would testify that Luis had drug tested, that Mother was going to receive training on controlling diabetes, and that Louis had moved out of the home.⁷ Counsel for DCFS presented a last-minute information for the court stating that Louis was still registered as living in Mother's home. The court indicated its tentative decision to leave the children in their placement with the aunt and provide Mother reunification services. Counsel for Mother argued that as Louis had moved out of the family home, the children should be returned to Mother. Counsel for DCFS and the boys' attorneys submitted on the evidence and the court's tentative to adopt DCFS's recommendation.

The court found by clear and convincing evidence that returning the boys to Mother would create a substantial risk of detriment to their safety, protection and physical and emotional well-being, and that there were no reasonable means to keep them safe without removing them from her

⁷ The results of Luis's drug test are not in the record.

home. The court said it was unconvinced that Louis was not still living with Mother, as there was no evidence that he had any other residence. As the court observed, it was Mother's obligation to ensure there was "no contact between the minors and any adults using drugs in her home. They deserve and have a right to a drug free environment." The court stated that the totality of the evidence, including Mother's poor judgment in allowing Louis to live in the home, her failure to obtain the training needed to control and treat Anthony's diabetes, and the condition in which she maintained the home, established that Mother was willing to put the children at risk. Mother was ordered to participate in a parenting classes, to participate in individual counseling to address child safety and protection and co-dependency, and to complete the medical training required for the care of Anthony's diabetes. Mother appealed the jurisdictional and dispositional orders. As noted, the appeal of the dispositional order has been dismissed.

DISCUSSION

In order to assert jurisdiction over a minor, the juvenile court must find the child at risk of harm under one or more of the categories specified in section 300. (*In re M.R.* (2017) 7 Cal.App.5th 886, 896.) DCFS bears the burden of proving that the minor comes under the juvenile court's jurisdiction by a preponderance of the evidence. (*Id.* at p. 897; see § 355, subd. (a).) On appeal, "we must uphold the court's [jurisdictional] findings unless, after reviewing the

entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings.” (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022.)

The court found jurisdiction appropriate under section 300, subdivisions (b)(1) and (d).⁸ To support assertion of jurisdiction under subdivision (b)(1), the juvenile court must find “[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, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse.”

⁸ The court stated its finding was under “subdivision (b).” In 2014, the Legislature amended subdivision (b) of section 300 to add a new provision -- subdivision (b)(2) -- covering failure to protect children from being victimized by sexual trafficking. (Stats. 2014, ch. 29 (S.B. 855), § 64.) The language of former section 300, subdivision (b) is now found in subdivision (b)(1), quoted above.

Section 300, subdivision (d) requires a finding that “the child has been sexually abused, or there is a substantial risk that the child will be sexually abused . . . by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.” Section 355.1, subdivision (d) provides, inter alia, that if the juvenile court finds that a parent, guardian, or any other person who resides with, or has the care or custody of, a minor who is the subject of the petition filed under Section 300 has been “previously convicted of sexual abuse” or “is required, as the result of a felony conviction, to register as a sex offender,” that finding “shall be prima facie evidence in any proceeding that the subject minor is a person described by subdivision (a), (b), (c), or (d) of Section 300 and is at substantial risk of abuse or neglect.” This provision “constitutes a presumption affecting the burden of producing evidence.” (§ 355.1, subd. (d); see *In Quentin H.* (2014) 230 Cal.App.4th 608, 614, quoting Evid. Code, § 604 [presumption affecting the burden of producing evidence “require[s] the trier of fact to assume the existence of the presumed fact until evidence is introduced which would support a finding of its nonexistence, in which case the trier of fact shall determine the existence or nonexistence of the presumed fact from the evidence and without regard to the presumption”].)

Mother's opening brief includes argument that substantial evidence does not support the court's b-2, b-3 and d-1 findings, but contains no discussion of the b-1 finding -- that she failed to protect the children from the danger posed by Louis as the result of his drug abuse. Mother contends in her reply brief that any argument directed at b-1 would have been "redundant" as she had "already argued that the evidence showed [Louis] was out of the home and she had addressed the risk he posed to the children." We disagree. The opening brief raised issues concerning the b-3 allegation (the condition of the home), but that allegation had nothing to do with Louis's presence in the home, and Mother's sole argument concerning the b-3 allegation was that she had alleviated the dangers posed by the extremely unhygienic state of the home by cleaning it just prior to the jurisdictional hearing. The opening brief also raised issues concerning the b-2 and d-1 findings -- that the children were at risk due to living with a registered sex offender, who was permitted to care for them. But Mother's argument focused solely on the section 355.1 presumption, contending that DCFS failed to meet its burden of proof because it relied entirely on the presumption in the face of affirmative evidence that none of the boys had been sexually abused by Louis. Nowhere in her opening brief did Mother argue that substantial evidence did not support the court's conclusion that Louis was still residing in the home. Accordingly, we agree that any issues pertaining to the b-1 allegation are forfeited.

Moreover, were we to address the merits, we would find no lack of substantial evidence to support the court's finding on the b-1 allegation. Louis admitted he had a 40-year-old drug habit and was currently using drugs. He twice tested positive for amphetamines and methamphetamine. He never tested clean. The children reported being afraid of him, and told his employer that Louis had locked them in their room and refused to feed them for days. His employer reported overhearing the older boys discussing getting drugs from Louis. Anthony reported seeing Louis use drugs, and while Anthony later recanted, the court was entitled to credit his initial statements. Mother acknowledged that Louis helped care for the boys, sometimes on his own for months at a time, and that she relied on him to transport them. Allowing a drug addict to care for children full time and transport them presents obvious dangers to their safety. The evidence that Louis had moved out of the family home was properly discounted by the court as he was still registered there, and there was no evidence he had secured other housing. Moreover, Mother repeatedly stated she could not care for herself or the children without Louis, and Louis had said he would live in his car, if necessary, in order to stay near Mother. In sum, the court's finding on the b-1 allegation was well supported.

As noted, Mother raises arguments concerning the b-2, b-3 and d-2 allegations: she contends that substantial evidence did not support the court's finding that the condition of the home put the boys at risk of serious harm

because she had cleaned the home a few days before the hearing, and that the presumption of risk from Louis's prior conviction of sexual abuse was rebutted by the boys' repeated denials of sexual abuse. We need not address those contentions. As respondent points out, a single true finding can support the court's assertion of jurisdiction, and the reviewing court "need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence." (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; accord, *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491-1492; see, e.g., *In re Shelley J.* (1998) 68 Cal.App.4th 322, 330 [declining to address remaining allegations after one allegation found supported]; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72 [same].)

A reviewing court may nevertheless consider the merits of a parent's appeal of fewer than all the jurisdictional findings when the contested findings "(1) serve[] 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].'" (*In re M.W.* (2015) 238 Cal.App.4th 1444, 1452, quoting *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763; see also *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548 ["The fact that the dependency action has been dismissed should not preclude review of a significant basis for the assertion of jurisdiction where exercise of that jurisdiction

has resulted in orders which continue to adversely affect appellant,” such as “restrictive visitation and custody orders”].) In her reply brief, Mother suggests that reversal of the court’s findings concerning the b-2, b-3 and d-2 allegations would transform her into a “non-offending” parent. Not so. All the allegations in the petition found true by the court pertained to Mother’s fault, including the b-1 allegation, which was based on her failure to protect the boys from the consequences of living with a drug abuser.

Mother further contends that reversal of the b-2, b-3 and d-2 findings could affect disposition. While the appeal was pending, however, the court ordered the boys returned to Mother’s home. Because we could grant Mother no effective relief by reversing the dispositional order, we granted the motion to dismiss the appeal of the dispositional order as moot. (See *In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315, 1316 [“When no effective relief can be granted, an appeal is moot and will be dismissed”]; *In re Dani R.* (2001) 89 Cal.App.4th 402, 404 [“[A]n action that originally was based on a justiciable controversy cannot be maintained on appeal if all the questions have become moot by subsequent acts or events”]; *In re A.B.* (2014) 225 Cal.App.4th 1358, 1364 [court could provide no effective relief to mother where jurisdiction was established under a subsequent petition based on new and independent facts while appeal of original jurisdictional order was pending].) As Mother identifies no substantial parental interest that could be affected in the future by the now superseded

dispositional order, we need not address her contentions with respect to the b-2, b-3 and d-2 findings.

DISPOSITION

The jurisdictional order is affirmed.

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MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.