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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re JACOB W., et al., Persons
Coming Under the Juvenile
Court Law.

B282146

(Los Angeles County
Super. Ct. No. CK73295)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARY W.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Julie Fox Blackshaw, Judge. Affirmed.

John M. Kennedy, 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, Deputy County
Counsel, for Plaintiff and Respondent.

INTRODUCTION

Mary W. (mother) appeals from a finding of dependency jurisdiction pursuant to Welfare and Institutions Code¹ section 300 over her four minor children. Mother contends her past drug use and depression do not constitute a current risk of harm to any of the children, and therefore the court erred in sustaining the jurisdictional allegations against her. We disagree and affirm.

FACTS AND PROCEDURAL BACKGROUND

A. *Initial Detention and Section 300 Petition*

Mother and S.W. (father) have four minor children, Ja. (born 2001), Jo. (born 2002), L. (born 2003), and A. (born December 2016).² The family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) immediately following the birth of A. in December 2016. Mother delivered A. at home with father's assistance. Mother and baby were then transported to the hospital.

At the hospital, mother denied any drug use, but tested positive for methamphetamines. According to the hospital worker who reported the case to DCFS, once she was "confronted, mother admitted to using drugs yesterday," and also to "smoking cigarettes and drinking alcohol." Mother also stated she had not received any prenatal care. Father reported that "mother was depressed over the pregnancy and she wanted to abort the baby." A. also tested positive for methamphetamines.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

² Father is not a party to this appeal. Mother and father also have an adult son, Ju.

On December 13, 2016, DCFS filed a petition naming all four minor children under section 300, subdivision (b).³ In count b-1, the petition alleged that A. was “born suffering from a detrimental condition consisting of a positive toxicology screen for methamphetamine and amphetamine. Such condition would not exist except as the result of unreasonable acts by [mother], placing the child at risk of physical harm. The mother’s use of illicit drugs endangers the child’s physical health and safety and places the child at risk of serious physical harm and damage.”

In count b-2, the petition alleged that mother’s history of illicit drug use, and current methamphetamine abuse, rendered her unable to care for the children. In addition, mother abused methamphetamine during her pregnancy with A. and had a positive toxicology screen at A.’s birth. Mother’s drug use and father’s failure to protect the children by allowing mother “unlimited access” to the children endangered the health and safety of the children and placed them at risk of serious harm.

In the DCFS detention report, the social worker detailed his investigation at the hospital on December 3, 2016. One of the nurses stated that after mother tested positive for methamphetamines, she “admitted to using meth the previous

³ Section 300 states, in relevant part, “A child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶]. . . (b)(1) The 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 by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's . . . substance abuse.”

night before she gave birth.” Mother did not elaborate further as to her drug use. Mother also admitted to having no prenatal care and “did not give any reason” for this failure. At this point, the toxicology results for A. were still pending. A. was born at full term and had no other medical issues.

The social worker also interviewed mother in the hospital. Mother “admitted using methamphetamine and stated that she used it because she was stressed and overwhelmed.” She stated she had only been using methamphetamine for the past two months and denied any other drug use. She also claimed that “after using meth 2 months ago . . . that she stopped briefly and that she used again yesterday even though she was aware of being pregnant.” Mother stated that “she does not have a reason for not undergoing prenatal care,” and that “she had initially wanted to terminate the pregnancy but as time went on she decided to keep the child.” She was unaware of her due date, which was why she gave birth at home after her labor suddenly began.

Mother claimed neither father nor her children were aware of her drug use, and she denied using methamphetamine at home. She was “unable to elaborate on frequency and source of the drug [*sic*].” She stated that father had returned to the family home a few months ago after she had “kicked him out due to [a] minor misunderstanding.” Mother denied any history of domestic violence, mental health issues, or alcohol abuse.

In his interview, father stated he was not aware mother was using drugs while pregnant, denied knowing that mother had a history of substance abuse, and stated he had never seen mother using drugs. He stated he did not know mother was pregnant until a few months prior. He admitted that the

children had previously been removed from the home for about six months in connection with an earlier DCFS case.

The social worker accompanied father home to interview the older children. Upon arrival, he noted that the home was “untidy and disorganized,” which father attributed to living with teenagers. Jo., Ja., and La. all denied any abuse or neglect and denied ever observing mother using any drugs. The children stated that father lived “off and on in the home” and would leave if mother asked him to following an argument. The children did not know mother was pregnant until a few months before the delivery. None of the children showed visible signs of abuse or neglect.

Mother and A. were discharged from the hospital and returned home. The other three children also remained in the home with mother and father. Mother and father both tested negative for drugs on December 7, 2016.

Around the same time, the social worker received a report that while mother and A. were in the hospital, mother had “intentionally removed the baby’s urinary bag to prevent testing the baby” for drugs. When questioned, mother stated that she “only removed the bag in the presence of a nurse in order to adjust it and ensure it doesn’t require changing.” On December 8, 2016, the social worker spoke to a doctor at the hospital who expressed concern about A.’s safety following her discharge with mother. The doctor noted that A. had initially tested negative for methamphetamine, but that “mother had taken the urine bag away from the baby twice, causing them to physically take the baby away from the mother” to obtain a urine sample. As a result, the hospital conducted a meconium drug screen on A.’s feces. Those results were positive for methamphetamine.

The report also noted the family's prior case history with DCFS. In 2009, the court sustained allegations that father physically abused Jo. by striking his face, and mother failed to protect the child. In addition, father and mother had a history of domestic violence and a history of substance abuse. The court terminated dependency jurisdiction in December 2009 with a "family law order in place." Mother was granted custody of the children (Ju., Jo., Ja., and L.) with monitored visits for father.

Based on the positive drug tests for mother and A., mother's admitted history of drug use and the prior dependency history, DCFS recommended removal of the children, categorizing them as at "high risk" for future abuse. In an addendum report filed December 13, 2016, DCFS recommended detaining the children with monitored visitation for both parents.

At the detention hearing on December 13, 2016, the court found a prima facie case for detaining the children pursuant to section 300, subdivision (b). The court noted that "normally in a case like this, if we just had a baby, I would detain the child from the mother given the drug use, the unquestioned drug use . . . which is a very, very serious situation." However, because there was no evidence that the older children were not well-cared for, the court ordered the children released to the parents "on the condition that the father reside in the home and the mother continue to test and test clean." The court also ordered mother to "immediately" enroll in a drug program and for DCFS to provide program referrals by the end of the week and to conduct unannounced home visits.

B. *Adjudication*

DCFS filed an amended petition on January 24, 2017. The amended petition repeated the allegations of the prior petition for

counts b-1 and b-2. Additionally, in count b-3, the amended petition alleged that mother had “mental and emotional problems including a diagnosis of Major Depression which renders the mother incapable of providing the children with regular care and supervision,” and placed the children at risk of serious physical harm.

DCFS filed the jurisdiction/disposition report on January 24, 2017. Mother reported to DCFS that she was a dependent of the juvenile court from ages five to 18. During the prior detention of Ju., Ja., Jo., and L., mother was compliant with her case plan and participated in counseling, parenting, and domestic violence classes. Father was ordered to participate in counseling and submit to drug testing, but was only “minimally compliant.” The court released the children to mother with a custody order granting her sole custody and terminated reunification services for father.

In an assessment on December 7, 2016, mother said she had been using methamphetamine “a couple of times per month since the Summer of 2016.” She denied any drug use prior to that time and claimed she was using the drug to “self medicate her depression.” She acknowledged suffering from depression-related symptoms since childhood. She attributed her methamphetamine use to “hanging around the wrong people,” but did not view herself as an addict, stating, “It wasn’t like I was hooked on it.” She reported smoking marijuana occasionally, including “a few weeks ago.” Mother acknowledged experiencing serious depression in the past 30 days and throughout her lifetime, but denied any suicidal thoughts or attempts, hospitalizations, or mental health diagnoses.

A social worker met with the family at their home on January 10, 2017. Upon entering the home, the social worker noticed an “overpowering odor of cat urine,” which was so strong it caused the social worker “to gag” and made her eyes water. The living room contained multiple piles of clothing, two bicycles, and two large fish tanks containing large turtles “living in a few inches of brown, fetid water, which contributed to the overall smell of the home.” A cat was playing with an empty can of cat food. The kitchen was cluttered and there were dirty dishes in the sink. The refrigerator contained food but the inside was “filthy.” There was a strip of beige tape hanging from the ceiling with multiple bugs stuck to it.

The hallway leading to the bedrooms was also cluttered. The first bedroom, occupied by Ja. and Jo., contained two stained, filthy mattresses with no bedding other than a single blanket. The pillows were also filthy. Clothing and school work was strewn about the room; the social worker also noticed a bowl of old cat food and a cat litter box. The parents’ bedroom was also cluttered and filthy. The room contained a terrarium with a bearded dragon, as well as a dirty paint bucket holding trash and used diapers. A.’s portable crib was clean. The third bedroom was occupied by Ju., then age 19. This room was the neatest in the house. Mother stated that the remaining child, L., slept on the couch and pointed to an old blanket, which was “highly malodorous.” The social worker advised the parents that the home needed to be cleaned within ten days. Father responded, “it’s not my house. I’m just here because the court ordered me to.”

Victoria Morales, an in-home counselor, visited the family on January 18, 2017. She reported that the home “smelled really

bad [sic] of cat urine and was very disorganized.” Father stayed in his room and did not participate in the meeting. Morales noted that mother was “very vague and kind of evasive” regarding the details of the prior dependency case, while the children remembered many of the details of the case. She described mother’s mood as “very flat. She made some eye contact but she wasn’t fully engaged.” Mother also “kept handing off the baby to the other kids.” Mother said she had attempted to contact GAIN but the number she had been given was not working. DCFS provided additional information to mother on January 11, 2017.

The children all appeared healthy and to be meeting developmental milestones. The reported grades for the three older children ranged from A to F.

The social worker returned to reassess the home on January 20, 2017. The smell of cat urine and piles of clothing were gone. The turtle tanks had been cleaned and the rooms were generally clean and less cluttered. The children’s beds had clean bedding. The social worker reported that the condition of the home had “significantly improved and there are no immediate safety factors present currently.”

The social worker also assessed and interviewed the children. A. was clean and appeared healthy. Mother was not breastfeeding and had a sufficient amount of formula and diapers. The social worker met with Jo. in private at his high school. He stated he was surprised when told that mother was using drugs. He noted mother had a friend, “Kiwi”, who he thought was weird and felt like she “was using my mom for food and stuff. My mom got rid of her last year.” He denied seeing mother use any type of drug prior to or during her pregnancy.

When asked about his mother's mood, Jo. responded that she had seemed sad "almost my whole life." He noted that mother's mood had improved slightly after A.'s birth, because "[n]ow she has something to do." Jo. reported that his parents were not arguing "as much as they used to," and that father helped mother with the baby. Jo. was aware that father smoked marijuana and had seen him under the influence at least once since A. was born, but stated that father did not smoke around the children. When asked what he would like to see change with his parents, Jo. stated, "I would like to see one of them get a job." He became emotional and had tears running down his cheeks while telling the social worker that there was "always a constant worry about money in the house and his father did not contribute to the family." He stated, "I feel like I have been neglected." However, he stated that he felt safe in his home.

The social worker also met with Ja. at his school. He was upset and surprised upon learning that mother and A. had tested positive for drugs. Ja. also mentioned mother's friend, "Kiwi," and stated he thought she was a drug user, but that Kiwi had not been around the family for months. He denied witnessing mother use drugs. When asked about mother's mood, Ja. stated that mother is often "stressed out," easily irritated, and "seems sad most days." He thought mother had appeared depressed for the past year. When asked why he thought mother might be depressed, he immediately said "my dad." He explained that his parents "argue a lot," and that father "would show up and stay for about a week then leave." He also stated that he did not think father was supportive of mother and he wanted father to leave. Ja. was aware that father smoked marijuana in his

bedroom. Ja. concluded that he felt safe in the home and mother was able to meet his needs.

L. made similar statements during her interview. She expressed surprise and disbelief over mother's drug use and denied ever seeing mother use drugs. She had noticed mother's depression over the past year, however. L. started to cry during her interview and told the social worker that she was upset about father and that mother was "depressed because my dad doesn't help us." She also became emotional explaining that her older brother, Ju., "works two jobs to help us out. He didn't even finish high school and he is trying to now. It's not fair; he should have been able to get his education without worrying about us." L. stated that "it would be better if he (father) wasn't here." She noted that father "probably" smoked marijuana in his bedroom.

Ju., the adult sibling, also denied ever seeing mother use drugs, but noted that mother had been "hanging around with some people who looked like drug users." He did not find out mother was pregnant until the day A. was born. He reported that mother had been depressed for "at least a year and a half." When asked about the condition of the home, Ju. stated, "It was worse about four months ago. I helped and everybody helped clean up but it has gone downhill again." Ju. did not complete high school, as he dropped out and took two jobs to help support the family.

The social worker also interviewed mother, who "presented with an extremely flat affect. Mother spoke slowly and had difficulty making eye contact." She was also "very vague" in answering questions. Mother reported having many arguments with father but denied any physical violence. She stated that she and father reunified and he moved back into the home about a

month after the prior dependency case closed in 2009. Since that time, father was “in and out,” and mother would get “upset because [father] doesn’t get a job or help out” and would kick father out of the home.

Mother stated she had only been using methamphetamine “for a couple of months” prior to A.’s birth and denied any prior history. When asked how frequently she used the drug, she replied, “I don’t know. Like one or two hits a couple of times a week.” Mother denied having a problem with drugs and denied telling hospital staff that she had been drinking alcohol or smoking cigarettes during her pregnancy.

When asked about her depression, mother noted she had participated in therapy as a child in dependency placement, but denied a history of depression or mental health diagnoses. She reported feeling depressed for the past few months because “the kids don’t listen or help out and they always argue.” Mother reported that she had been drug testing but had not yet enrolled in a substance abuse treatment program. She stated that she planned to enroll in a treatment program and counseling but was advised she also needed to participate in a GAIN employment program. However, mother said she had not done so, because she had been given the wrong worker’s phone number, and did not know who her assigned GAIN contact was.

Mother told the social worker that she considered terminating her pregnancy but then changed her mind. When asked why she did not get prenatal care, she stated, “I don’t know.” She gave birth on the toilet and father “caught her (the baby).” Mother stated that she wanted to keep the baby. The social worker noted that during the two hour visit, mother held the baby “but didn’t really interact with her.”

The social worker interviewed father on the same day. He stated, “The only reason I am here is because of the Court order.” When the social worker mentioned that the home needed to be cleaned, father responded, “Why you looking at me? This is [mother’s] house. Like I said, I am in and out.” He recalled that mother told him she did not want the baby a few weeks before she gave birth. He was unaware mother was using methamphetamine during her pregnancy. However, before she was pregnant, he “assumed” mother was using drugs because she was “hanging out with this girl who I knew was a drug user.” Mother denied the drug use, but he “didn’t really believe her.”

Father reported that mother “has been depressed all her life,” and she “doesn’t do anything for herself. . . . She doesn’t take care of herself.” But father insisted that mother was a “great mom,” and was able to care for the baby.

DCFS listed the following strengths for the family: the parents were willing to participate in services and cooperate with DCFS; the parents had an appropriate home; they had met the needs of the older children and “there are no concerns regarding them.” DCFS also concluded there were “no immediate risks to the children in the care of their parents.” However, DCFS noted that father “does not appear to be vested in caring for the children” and “did not demonstrate a sincere desire to assist the mother and protect the newborn and his older children.” DCFS therefore recommended that the court “make the Home of Parent(s) order to be unconditional, to allow the father to leave the home.” DCFS also noted that mother appeared to minimize her substance abuse and “was not being completely honest about this issue.” Mother submitted to two drugs tests on December 23, 2016 and January 19, 2017; both results were negative.

However, DCFS noted that mother was not yet participating in a substance abuse treatment program, in violation of the court's order.

At the adjudication hearing on February 7, 2017, mother's counsel argued for dismissal of the entire petition on the basis that there was no current risk of harm to the children. Minors' counsel argued that the petition should be sustained, noting that mother had done nothing since the beginning of the case to address her substance abuse or mental health issues. Counsel for DCFS noted that "the situation with the mother seems to be all intertwined--her mental health issues, the substance abuse, the condition of the home. There is evidence that just the mere intervention of DCFS and the court for a few weeks has improved the condition of the home."

The court sustained the petition as alleged. The court stated it believed "mother has an underlying mental health issue involving depression which, I think, has taken its effect in the home, and the children feeling that they have not been paid attention to by the mother, the filthy state of the home." In addition, the court pointed to "mother's self-medicating . . . with the drugs which she admits herself she used in order to improve her otherwise depressed mood . . . I think there is good basis to believe that that just exacerbated the problems of neglect of the children and a filthy home. That is the nexus for the older children. They may not have been actually aware of mother's drug use, but they certainly were aware of a home in which they had two inattentive parents which was extremely inappropriate and filthy." With respect to A., the court pointed out that she was "born with drugs in her system which . . . is a very troubling injury." The court also found that father "knew of mother's

history,” knew “of the situation going on in the home,” and if he was not “directly aware of mother’s drug use, you should have been aware.”

Turning to disposition, the court ordered the children to remain in the home under DCFS supervision. The court noted it was “not confident mother has reached sobriety. I’m not confident she has addressed her mental health issues.” Thus, the court ordered that A. was “not to be left alone” with mother and that if father left the home, he would be the “main caretaker” for A. The court also ordered family maintenance services for both parents.

Mother filed a timely notice of appeal.⁴

DISCUSSION

A. *Governing Principles*

We review the dependency court’s jurisdictional findings and order for substantial evidence. (*Los Angeles County Dept. of Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 966; *In re R.C.* (2012) 210 Cal.App.4th 930, 940.) Under this standard, “[w]e review the record to determine whether there is any substantial evidence to support the juvenile court’s conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court’s orders, if possible.” (*In re David M.* (2005) 134 Cal.App.4th 822, 828 (*David M.*).)

Section 300, subdivision (b) permits the assertion of jurisdiction where “the child has suffered, or there is a

⁴ Mother’s notice of appeal indicates she is appealing from “all jurisdictional and dispositional orders made” on February 7, 2017. However, mother’s briefs on appeal challenge only the court’s jurisdictional findings.

substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child . . . or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . substance abuse.” Where the child has not suffered actual harm, the evidence must establish ““that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm. . . .” [Citation.]” (*In re A.G.* (2013) 220 Cal.App.4th 675, 683.)

“Although section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824), the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. (*In re N.M.* (2011) 197 Cal.App.4th 159, 165.) The court may consider past events in deciding whether a child currently needs the court's protection. (*Ibid.*) A parent's “[p]ast conduct may be probative of current conditions” if there is reason to believe that the conduct will continue.’ (*In re S.O.* (2002) 103 Cal.App.4th 453, 461; accord, *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216 [(*Christopher R.*)]).” (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383–1384.)

“In addition, the Legislature has declared, ‘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. Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment.’ (§ 300.2.) Exercise of dependency court jurisdiction under section 300,

subdivision (b), is proper when a child is ‘of such tender years that the absence of adequate supervision and care poses an inherent risk to [his or her] health and safety.’ (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824; accord, *In re Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216.)” (*In re Kadence P.*, *supra*, 241 Cal.App.4th at p. 1384.)

B. *Substantial Evidence Supports The Jurisdictional Findings*

Mother contends substantial evidence did not support the dependency court’s finding of jurisdiction over her four minor children pursuant to section 300, subdivision (b). There are three elements required for a finding of jurisdiction: “(1) neglectful conduct or substance abuse by a parent in one of the specified forms, (2) causation, and (3) serious physical harm to the child, or a substantial risk of such harm. [Citation.]” (*In re Rebecca C.* (2014) 228 Cal.App.4th 720, 724–725.) Mother argues that the evidence was insufficient to support a finding of her substance abuse and, further, that there was no link between her drug use or depression and any present risk of serious physical harm. We disagree on both points.

First, mother asserts that the record does not support a finding that she was a substance abuser. She relies heavily on the definition of “abuse” adopted in *In re Drake M.* (2012) 211 Cal.App.4th 754 (*Drake M.*) for this purpose.

In *Drake M.*, the Court of Appeal reversed a jurisdictional finding based on a father’s use of medical marijuana. (*Drake M.*, *supra*, 211 Cal.App.4th at pp. 757–758.) The court first distinguished between substance “use” and substance “abuse,” noting that “jurisdiction based on ‘the inability of the parent or guardian to provide regular care for the child due to the parent’s . . . substance abuse,’ must necessarily include a finding that the

parent at issue is a substance *abuser*. (§ 300, subd. (b).)” (*Id.* at p. 764.) Such a finding of substance abuse, the court concluded, must be based on either (1) a diagnosis by a medical professional of a “current substance abuse problem”; or (2) evidence sufficient to establish a “current substance abuse problem” as defined in “The American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (4th rev. ed. 2000) (DSM–IV–TR).” (*Id.* at p. 766.) Under the latter definition, substance abuse is based on “clinically significant impairment,” as manifested by “failure to fulfill major role obligations at work, school, or home,” “recurrent substance use in situations in which it is physically hazardous (e.g. driving an automobile . . . when impaired)”; “recurrent substance-related legal problems”; or “continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance.” (*Ibid.*)

Other courts in this district have rejected the conclusion that “only someone who has been diagnosed by a medical professional or who falls within one of the specific DSM–IV–TR categories can be found to be a current substance abuser.” (*Christopher R.*, *supra*, 225 Cal.App.4th at p. 1218; see also *In re Rebecca C.*, *supra*, 228 Cal.App.4th at p. 726 [“a finding that a parent has a substance abuse problem justifying the intervention of the dependency court” is supported by “a medical diagnosis of substance abuse” or “evidence of life-impacting effects of drug use”].) In *Christopher R.*, the court held that the mother’s use of cocaine “while in the final stage of her pregnancy, combined with her admitted use of the drug in the past and her failure to consistently test or enroll in a drug abuse program, justified the juvenile court’s exercise of dependency jurisdiction over her

children,” without regard to whether she fell within a specific DSM–IV–TR category or had been diagnosed as a substance abuser by a medical professional. (*Christopher R.*, *supra*, 225 Cal.App.4th at pp. 1218–1219 [noting that “the *Drake M.* formulation . . . is not a comprehensive, exclusive definition mandated by either the Legislature or the Supreme Court. . . .”].)

Similarly, here, substantial evidence supports the conclusion that mother had a substance abuse problem at the time of the jurisdictional hearing. The evidence before the court showed that mother was using methamphetamine despite knowing she was pregnant with A., including use on the day before she gave birth, as well as marijuana a few weeks before that. She also denied her drug use until confronted with a drug test; minimized and gave vague, evasive, and inconsistent answers about her history with illicit drugs; and admitted to using methamphetamine because she was “hanging around the wrong people” and trying to self-medicate for her depression. There was also evidence of other significant effects on her life and her family from her drug use—most notably, that A. was born with methamphetamine in her system and mother attempted to prevent the baby from receiving an accurate drug test. In addition, mother was unemployed, the family struggled financially, and the home had been kept in an extremely unsanitary condition. And although mother had taken two clean drug tests as of the jurisdictional hearing, she had not yet begun a substance abuse treatment program, despite the court’s prior order that she do so immediately. This evidence justified the court’s conclusion that mother was a substance abuser.

Second, mother contends the court failed to find the necessary nexus between mother’s drug use and depression and a

substantial risk of harm to the children. It is well-settled that mere use of illicit drugs by a parent constitutes an insufficient basis to support jurisdiction under subdivision (b) of section 300, absent evidence that drug use has caused a child serious physical harm or illness or put the child at substantial risk of incurring such harm. (*Drake M.*, *supra*, 211 Cal.App.4th at p. 769; *In re Destiny S.* (2012) 210 Cal.App.4th 999, 1003 [“It is undisputed that a parent’s use of marijuana[, hard drugs, or alcohol] ‘without more,’ does not bring a minor within the jurisdiction of the dependency court.”].) Similarly, mental illness, alone, is insufficient to establish a risk of harm to a child. (See *In re Heather P.* (1988) 203 Cal.App.3d 1214, 1228.)

Here, there was substantial evidence connecting mother’s drug abuse, depression, and neglectful conduct with a substantial risk of physical harm to the children. With respect to A., mother had clearly endangered her child by failing to seek any prenatal care, using methamphetamine during her pregnancy—causing A. to be born with drugs in her system—and then attempting to prevent drug testing for A. With respect to all four children, DCFS detailed a history of their home kept in an unsanitary condition, including filthy and inadequate bedding, dirty and cluttered rooms, multiple animals in unclean containers, and an overpowering smell of cat urine. Although the home was markedly improved upon the second visit by the social worker on January 20, 2017, there was evidence that it remained in an unsanitary condition for over a week (between the initial visit on January 10 and the visit by the counselor on January 18, 2017) and that the family had been living in similar conditions on prior occasions.

In addition, there was evidence from which the court could conclude that these were not merely past problems, but represented an ongoing risk of harm that required continued involvement of the dependency court. Mother had not sought treatment for her drug use or mental health issues, admitted attempting to self-medicate her depression with illicit drugs, minimized her history of drug use and domestic violence, and allowed father to return to the home shortly after the last dependency case, despite his failure to meet the court's requirements.

As such, this case is distinguishable from those cited by mother in which a court declined to impose jurisdiction based on a parent's substance abuse *alone*. In *In re David M.*, *supra*, 134 Cal.App.4th at p. 829, for example, the court reversed a jurisdictional finding, concluding that the parents' substance abuse and mental health issues were not tied to any actual harm to the minor. The mother had obtained some prenatal care, the baby was born without drugs in his system, and the "evidence was uncontradicted that David was healthy, well cared for, and loved, and that mother and father were raising him in a clean, tidy home." (*Id.* at p. 830.) Similarly, in *In re Rebecca C.*, *supra*, 228 Cal.App.4th at p. 727, the court concluded there was no evidence that the mother's drug abuse created a substantial risk of harm to her teenaged daughter where their home was clean and "free of hazards," the mother was significantly involved in Rebecca's education, and had "committed herself" to a drug program, and the only evidence of risk was prior homework problems.

Finally, we reject mother's suggestion that the recommendation by DCFS to allow father to leave the home

meant the children were free of any risk of harm in mother's care. DCFS expressed concern with father's lack of support for the family and the added stress his presence in the home brought to mother and the older children. Thus, DCFS recommended that the court remove the requirement that father be present in the home. It is clear from the DCFS reports, however, that the department's concerns with mother remained and that dependency jurisdiction and DCFS involvement with the family was necessary to protect the children from a substantial risk of harm. The record reflects the efforts by the court and DCFS to balance their concerns about mother and father's conduct with a desire to keep the children in their home with at least one parent, if safe to do so under DCFS supervision. The court's determination that removal was not necessary does not mean that jurisdiction was not appropriate. Under these circumstances, we conclude that the dependency court's finding of jurisdiction under section 300, subdivision (b) is supported by substantial evidence.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.