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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re J.C. et al., Persons Coming Under the
Juvenile Court Law.

B253594
(Los Angeles County
Super. Ct. No. CK73415)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JUDY G.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Marguerite Downing, Judge. Reversed.

Kate M. Chandler, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Jeanette Cauble, Deputy County Counsel, for Plaintiff and Respondent.

In this dependency case (Welf. & Inst. Code, § 300 et seq.),¹ Judy G. (Mother) appeals from the juvenile court's jurisdictional and dispositional orders, contending there is insufficient evidence supporting the jurisdictional findings that her children were at risk of harm because her former boyfriend, Andrew O., engaged in violent altercations with her and possessed and used drugs in the children's presence. We agree with Mother's contentions and reverse.

BACKGROUND

The juvenile court previously assumed jurisdiction over Mother's three children with Daniel C. (Father)² in mid-2008, based on its jurisdictional findings Mother and Father engaged in violent altercations in the children's presence, Father had a history of substance abuse and was a current user of methamphetamine, and Father suffered from mental and emotional problems. In September 2008, the court ordered the children suitably placed, and in February 2009 ordered the children placed with Mother. Father moved back into the family home in May 2009, with the approval of the court. In August 2009, the court terminated dependency jurisdiction.

In June 2010, the juvenile court again assumed jurisdiction over Mother and Father's children (now four children) based on its jurisdictional findings Mother and Father engaged in violent altercations in the family home, and Mother allowed Father into the home and to have unlimited access to the children in violation of a restraining order. About two months before the Los Angeles County Department of Children and Family Services (DCFS) filed the petition in the 2010 dependency proceedings, Father was arrested for inflicting corporal injury on Mother. In December 2010, Mother reunified with the children. The court terminated jurisdiction in January 2011, issuing a family law order granting Mother sole legal and physical custody of the children with monitored visitation for Father.

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

² Father is not a party to this appeal.

Detention³

On February 19, 2013, DCFS received the first of two referrals which preceded the filing of the section 300 petition at issue on appeal. The unidentified person who made the referral reported that he or she was interviewing Father when a packet of methamphetamine fell out of Father's pocket. Father was arrested. At the time of this referral, Father did not live with Mother and their four children. Father lived with the children's paternal grandparents. The children lived with Mother.

A DCFS social worker attempted to interview Mother on numerous occasions in February, March and May 2013 about the referral. Although the social worker scheduled and confirmed with Mother the dates of prospective home visits, Mother was not home when the social worker arrived. Because the social worker had been unable to interview the children at their home, on May 17, 2013, the social worker went to the elementary school Mother and Father's three daughters attended. There, the social worker interviewed G.C. (age 6), then J.C. (age 9), then S.C. (age 8), each individually. Mother and Father's son, C.C. (age 4), was not present because he did not attend the school.

The three girls denied any abuse or neglect by Mother. G.C. told the social worker Mother's boyfriend Andrew called Mother profane names. G.C. stated she felt safe in her home when Andrew was not present. G.C. was afraid of Andrew because he threatened to hurt Mother. G.C. explained, "'One time he [Andrew] was banging on the door and my mom told us to not open the door and he broke in through a window[.] [W]e were scared so we started crying.'" G.C. denied Andrew ever hit Mother.

The social worker asked J.C. if there was domestic violence in the home, and J.C. "responded 'yes, Andrew has tried breaking into our house and yelling bad names at my mom.'" J.C. was afraid Andrew would hurt Mother. J.C. stated she felt safe in her home "'[o]nly when it's my mom and us . . . not when Andrew is there because Andrew gets really mad really fast and he will yell at my mom and call her names in front of us.'" J.C.

³ The facts in this section are taken from the July 1, 2013 detention report, unless otherwise indicated.

cried when talking about Andrew. When the social worker inquired about drug use, J.C. denied Mother or Father used drugs but stated, “Andrew uses drugs because his eyes are red all the time.”

S.C. denied anyone called her or her siblings “any names,” and also denied Andrew said “bad words against” Mother. S.C. stated Andrew was “nice” to her and she was not afraid of him. When the social worker asked her if there was domestic violence in her home, S.C. responded, “Well, there’s just some yelling that they do which scares me because they shouldn’t do that.” When asked if she felt safe in her home, S.C. responded, “yes, when Andrew and my mom don’t fight things are good.”

On June 3, 2013, DCFS received the second of two referrals which preceded the filing of the section 300 petition at issue on appeal. The “anonymous individual” who made the referral reported a domestic violence incident at Mother’s home on June 1, 2013, between Mother, Andrew and Father. The reporting party alleged Andrew “was in possession of a gun and shot at a stop sign.” The reporting party also alleged Mother and Andrew “were engaged in a physical altercation in which [Andrew] was attempting to sexually assault the mother while the children were in the apartment.”

The same day DCFS received the June 3, 2013 referral, the social worker interviewed the children about it. G.C. stated, on June 1, 2013, Andrew yelled profanities at Mother because he was angry Father was calling Mother. Andrew was in the bathroom, yelling at Mother as she took a shower. G.C. told the social worker “she was ‘terrified’ because Andrew yelled at the mother that he was going to hurt her where it hurts the most.” G.C. did not see Andrew hit Mother. G.C. “denied that she saw or overheard the mother being raped.” G.C. did see Andrew and Father get into a physical altercation that day, during which Andrew hit Father and Father choked Andrew. G.C. stated she had been “having a lot of nightmares” about Andrew kidnapping one of the children and then killing the children. The social worker asked G.C. why she believed Andrew would hurt her and her siblings and Mother would not be able to protect them. G.C. responded, “because Andrew is stronger than my mom and he does drugs.” When the social worker asked G.C. how she knew Andrew did drugs, G.C. stated the last time

she was in the car she saw a “small container which had cut up grass inside of [it] that smelled weird.” G.C. had seen Andrew place the grass inside one end of a glass pipe and smoke out of the other end.

S.C. told the social worker, on June 1, 2013, Andrew “yelled at” Mother, telling Mother “she was stupid and that she was going to pay for cheating on him with [Father].” S.C. “denied hearing or seeing the mother being sexually assaulted.” S.C. stated she saw Father and Andrew “fight in the yard” on June 1, 2013. Later the same day, Andrew “showed up to the house and stated that he was going to hurt the child,” according to S.C. The detention report does not make clear whether “the child” referred to in the preceding quote was S.C. or one of her siblings. S.C. told the social worker she was “constantly living in fear that Andrew w[ould] kill the family because he ha[d] broken into the house through the mother’s bedroom window and proceeded to lock the door and threaten the mother.” When asked if anyone in the home used drugs, S.C. stated she believed Andrew did because she had seen him “carry a black small box in the trunk of his car filled with jars which have ‘cut plants in them.’” Although S.C. had never seen Andrew use drugs, she told the social worker, “he has red eyes sometimes and I know that means people do bad stuff like drugs when their eyes are red.”

J.C. reported that, on June 1, 2013, Father “fought with Andrew outside in the side yard because Andrew was speaking down to the mother.” J.C. stated she wanted Mother to stop seeing Andrew because he yells obscenities at Mother. J.C. told the social worker that the verbal abuse by Andrew toward Mother caused J.C. to have “a lot of nightmares that she will get killed.” J.C. also reported she had “seen jars in Andrew’s car filled with cut grass that smells funny.”

The social worker asked four-year-old C.C. about the incident on June 1, 2013. C.C. stated, “Andrew and daddy were fighting outside.” C.C. nodded his head affirmatively when the social worker “asked the child if Andrew hits *or* yells at the mother.” (*Italics added.*) C.C. ignored the social worker and played with toys when the social worker “asked the child to explain what happened.”

The social worker also interviewed Mother on June 3, 2013. Mother stated, on June 1, 2013, Father made an unannounced visit to her home because “he had been ‘kicked out of his home’” and was looking for a place to stay. She and Andrew argued because Father “attempted to enter her residence without her consent.” According to Mother, Andrew fought with Father because he believed Mother “was being threatened by the father and proceeded to ‘protect’ her.” Mother initially denied the children observed the fight between Father and Andrew because the children were inside the home and the fight occurred outside. After the social worker told Mother the children reported they were looking out the window, Mother acknowledged the children “‘might have’” witnessed the fight. Mother admitted she and Andrew engaged in a verbal altercation inside the home, following the physical altercation between Father and Andrew. Mother denied Andrew raped or physically abused her. The social worker asked Mother “why she locked the children in the bedroom.” Mother explained she did not want the children to hear the argument. The social worker told Mother the children heard Andrew shouting profanities at her.

Mother informed the social worker she planned to end her relationship with Andrew and preclude him from her home. The social worker suggested Mother seek a restraining order against Andrew, and Mother said she would. DCFS implemented a safety plan with Mother under which Mother agreed to obtain a restraining order against Andrew, to disallow Andrew from entering her home and being around her children, and to decline to engage in verbal and physical altercations with a partner in the presence of the children.

The next day, June 4, 2013, Mother filed requests for restraining orders against Father and Andrew. During a home visit on June 17, 2013, Mother showed the social worker documentation showing she had filed for the restraining orders. The social worker interviewed each of the children individually. The children consistently reported they had not seen Father or Andrew since before June 4, 2013.

In the detention report DCFS acknowledged Mother “seem[ed] to be appropriately protecting the children.” Nonetheless, DCFS recommended juvenile court intervention

based on Mother's "past history of exposing her children to domestic violence incidents." DCFS believed the children were in need of mental health services as evidenced by their nightmares, and Mother was "in need of intense mental health services to assist in developing strategies/tools to better select partners who are not abusive towards her or the children, in order to minimize future risk of emotional abuse and general neglect." DCFS did not detain the children from Mother.

Although Mother had complied with the safety plan, and there was no indication Mother or the children had had any contact with Andrew since June 3, 2013, DCFS filed a dependency petition under section 300, subdivisions (a) and (b), on July 1, 2013. DCFS alleged Andrew's violent altercations with Mother and Father in the children's presence (counts a-1 & b-1), and Andrew's possession and use of "illicit drugs" in the children's presence (count b-2), and Mother's failure to protect the children from such conduct by Andrew, placed the children at risk of harm.

Mother appeared at the July 1, 2013 detention hearing. Father did not appear because he was in jail. The juvenile court ordered the children detained from Father and released to Mother. The court also ordered family maintenance services for Mother and Father. The court awarded Father monitored visitation to occur after Father made contact with DCFS and to be consistent with the terms of the restraining order. The court precluded contact between Andrew and the children.

Jurisdiction/Disposition⁴

On July 29, 2013, a dependency investigator interviewed Mother at a DCFS office. Mother acknowledged she and Andrew had had verbal altercations, but denied they had had physical altercations. She also denied Andrew had ever threatened to harm her or the children. Mother admitted Andrew once entered her home through her bedroom window when she refused to open the door for him, but denied he had broken

⁴ The facts in this section are taken from the August 6, 2013 jurisdiction/disposition report, unless otherwise indicated.

the window. On that occasion, Mother asked Andrew to leave and he did after a few minutes. Mother reported she was not currently dating anyone.

Regarding the June 1, 2013 incident between Andrew and Father, Mother told the social worker Father grabbed Andrew by the neck, but “there were no punches thrown.” Mother explained that when the fight started, she “immediately took the children in the house” and neighbors called the police. Mother stated, “I have always tried to protect my children.”

Mother denied the children had ever seen anyone smoke drugs. Mother added, “No one is allowed to smoke on my side of the property.”

On July 30, 2013, the dependency investigator interviewed eight-year-old S.C. and four-year-old C.C. at their home. S.C. told the dependency investigator she had not seen Andrew since Mother told him “to leave” and “to stop coming by.” According to S.C., the last time she saw Andrew he was “saying bad words” to Mother, and “he grabbed [Mother’s] wrist and smashed her fingers,” as Mother “was trying to get [him] out of the house.” S.C. did not state how long ago she had last seen Andrew.

S.C. spoke to the investigator about the June 1, 2013 altercation between Father and Andrew. S.C. stated Father called and told the children he was coming over. When Father arrived, Andrew was outside yelling at Mother and “saying mean stuff to her.” According to S.C., Mother told Andrew to leave her home. Father asked Andrew why he was there and if he was being mean to Mother. Father told S.C. to go inside, and Father also went inside the home. Andrew remained outside and he broke the motorcycle Father had brought with him for S.C. Father went back outside and Andrew challenged him to a fight. S.C. heard Father say he did not want to fight because he did not want to go to jail. Mother called the police and Andrew left before officers arrived. S.C. told the investigator, ““The police came and they took my dad to jail. After that things went back to normal because Andrew stopped calling and coming around.””

S.C. reported Andrew smoked something that looked like a cigarette, but it was ““fatter.”” Once he dropped one and S.C. went to pick it up but Mother instructed her not

to touch it. S.C. also told the investigator, ““Sometimes [Andrew’s] eyes are red and that scares me a little.””

When the dependency investigator interviewed C.C., he stated, ““I haven’t seen Andrew. Andrew is mean to mom.”” The investigator ““attempted to engage C[.C.] in further conversation regarding Andrew; however C[.C.] shut down and would not provide any additional statements.””

On August 1, 2013, the dependency investigator interviewed 10-year-old J.C. and seven-year-old G.C. at a DCFS office. J.C. told the investigator: ““Andrew hasn’t been back in like two months. He never lived with us, he only would come and visit. Sometimes he would argue with my mom, but he would never hit her. Sometimes he would call her bad words. . . . Sometimes when the[y] argue they will go into my mom’s room. I don’t feel safe when Andrew is there. Sometimes he can get a little aggressive and a little mad, but he doesn’t hurt anyone. . . .””

J.C. also spoke to the investigator about the June 1, 2013 altercation between Father and Andrew. J.C. stated Father came to the home to drop off a laptop computer. When he arrived, Andrew was yelling at Mother. Father asked Mother if ““everything was okay,”” and Andrew asked Father, ““Why would anything be wrong?”” Father said he was going to leave, and he started backing his car out of the driveway. Andrew stood in the driveway waiting for Father to leave. J.C. and her siblings ““went inside the house and locked the doors because [Mother] was taking a shower and she did not want anyone inside of the house.”” Father returned to drop off a charger for the computer. Andrew asked Father, ““Why would anything be wrong? Why did you come back?”” Father and Andrew began arguing. J.C. could not hear what they were arguing about because she was in Mother’s room. According to J.C., G.C. started crying because ““she thought [Father] was going to get hurt.”” Father ““said that he was going to leave and he put the charger into [Mother]’s room through the window.”” J.C. told G.C. ““to stop crying and that everything was going to be okay.””

J.C. told the investigator she had never seen anyone use drugs at her home. J.C. was aware S.C. reported she had seen drugs in Andrew’s car, but J.C. never saw them.

When the dependency investigator interviewed G.C., she stated: “I haven’t seen Andrew. It has been a long time since he has been at our home. I don’t want him to come back. Sometimes when he use[d] to come to our house he would come at night. One time he came and opened the window in my mom’s room. He started talking to my mom about something and I was trying to go to sleep.”

G.C. spoke to the investigator about the June 1, 2013 altercation between Father and Andrew. G.C. stated Father came to the home to drop off “his bike and our bikes. Andrew started talking to [Mother] while she was taking a shower. He was saying mean things to her.” Father “came to the door” and asked Mother if “everything [was] alright.” Andrew responded, “Why do you care homie?” As he said that, Andrew made an aggressive gesture to Father, indicating he wanted to fight. Andrew walked outside and “started trying to fight [Father].” As Father was trying to push Andrew away, Mother told the children “to go in the room and watch T.V.”

When the investigator asked G.C. about drugs, G.C. stated: “Drugs are like little piles of green things and sometimes different stuff too. No one told us about drugs. We just saw it. It was this green stuff outside the door and it wasn’t grass. It smelled nasty. When Andrew used to have his mustang I saw it in a little jar like box. It was under the driver’s seat of his car. One time when we were going to the store we saw it. When we got out of the car C[C.] lost his shoe and when I went to get his shoe that is when I saw the green stuff.”

In the jurisdiction/disposition report, DCFS stated: “At this time there are no safety concerns present that necessitate detention. Mother is in compliance with the safety plan that was created on 06/03/13 and mother has not had any contact with her male companion, Andrew O[.] Although[] mother is in compliance with the safety plan the Department remains concerned about mother’s minimization of domestic violence. Mother has had two prior court cases for domestic violence and has received 35 months of remedial services, which have failed to address mother’s issue regarding domestic violence. This is evidenced by the petition filed with the court on 07/01/13. Mother’s minimization of domestic violence and her inability to learn from her prior mistakes

creates substantial risk for the children. Court jurisdiction is necessary given mother's history of domestic violence and prior child welfare history to ensure the safety and wellbeing of the children."

In a last minute information for the court, dated August 28, 2013, DCFS summarized an August 6, 2013 interview the dependency investigator had with Father. Father stated, in March 2013, he became aware of domestic violence between Mother and Andrew. His children told him "they were being strangled and . . . verbally abused by" Andrew. A police officer visited Father's home and told him C.C. had a burn mark on his head from a cigar, and the doctor's report stated Father had burned him. Father told the officer he had not seen his son during the relevant time period and had not burned him. The same weekend Father learned about the burn mark—he did not provide a date—Mother asked Father to watch the children. When Father asked Mother about the burn mark on C.C., he "noticed that [Mother] had bruising on her face and her arms." Mother told Father "she had fallen down the stairs," but Father did not believe her.

The dependency investigator asked Father about his June 1, 2013 altercation with Andrew. Father stated he went to Mother's home to drop off some items after Mother agreed he could store some things there. When he arrived at Mother's home, his "daughters ran outside" and told him Mother was crying and "need[ed] help." Through the open front door, Father observed Andrew "restraining [Mother], kind of pushing her into the bathroom by her arms." Father asked Andrew "what was going on," and Andrew made an aggressive gesture toward Father. Father asked Andrew to go outside to talk. Father told the investigator: "He [Andrew] started walking towards me and I turned around and I could feel him rushing towards me from behind. I immediately turned around and he was so close to me that I hit him on the head with my cell phone. With my free hand I pushed him back and grabbed the skin on his chest. I squeezed his chest to the point where he felt a little pain and I told him to get in the car and leave. He began to yell gang names at me, . . . and that he would be back to kill [Mother] and the kids." As he was getting ready to leave Mother's home, Father "heard a car drive by and three gun

shots were fired. It sounded like the gun shots may have hit a stop sign or some kind of metal.”

Regarding drug use at Mother’s home, Father told the dependency investigator, when he returned to Mother’s home at about 11:00 p.m. on June 1, 2013, he “noticed that there was a vial outside of the house in the trash can” and he was “assuming that it was PCP.” One of the neighbors told Father he or she “observed [Andrew] walking into the house with a crate full of vials” and Father was “assuming that they were selling [drugs].” Father “asked [Mother] about it and she said that it was not true.”

Father informed the dependency investigator that Mother sought a restraining order against him soon after the June 1, 2013 altercation. Father also stated, “I have not seen my children in months, not as frequently as I would like to.”

On October 23, 2013, Mother appeared in court and the juvenile court adjudicated count b-2 in the petition regarding Andrew’s possession and use of drugs in the children’s presence. The court continued the adjudication on counts a-1 and b-1, because the court found Father had not received proper notice of the hearing and those counts alleged not only violent altercations between Andrew and Mother, but also the June 1, 2013 altercation between Andrew and Father. The children’s counsel asked the juvenile court to dismiss count b-2, arguing, “The allegations in the petition relate to Mother’s former male companion. He has been out of the picture for more than four months now. [¶] I think in terms of what brought this petition before the court are not current [*sic*].” Mother’s counsel joined the children’s counsel in asking the court to dismiss count b-2, adding, “The whereabouts of [Andrew] are currently not known. He has not had any contact with the children since prior to this petition being filed” DCFS argued there was sufficient evidence to sustain count b-2.

The juvenile court sustained count b-2, which states: “On prior occasions, in 2013, the children J[.]C[.], S[.]C[.], G[.]C[.] and C[.]C[.]’s mother, Judy G[.], placed the children in a detrimental and endangering situation in that the mother allowed the mother’s male companion, Andrew O[.] to frequent the children’s home and have unlimited access to the children, while the male companion was under the influence of

illicit drugs. On prior occasions, the male companion possessed, used and was under the influence of illicit drugs in the children's presence. Such a detrimental and endangering situation established for the children by 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 physical harm, damage, danger and failure to protect."

At a hearing on December 13, 2013, the juvenile court found notice to Father was proper, and it adjudicated counts a-1 and b-1. As originally pleaded in the July 1, 2013 petition, those counts alleged: "On 06/01/2013, and on prior occasions, the children, J[.]C[.], S[.]C[.], G[.]C[.] and C[.]C[.]'s mother, Judy G[.] and the mother's male companion, Andrew O[.], engaged in violent altercations in the children's presence. On a prior occasion, the male companion broke a window in the children's home and entered the children's home. On a prior occasion, the male companion threatened to harm the mother and the children. On a prior occasion, the male companion engaged in a violent altercation with the children's father, Daniel C[.] in which the father and male companion struck each other with their fists. The mother failed to protect the children in that the mother allowed the male companion to frequent the children's home and have unlimited access to the children. Such violent conduct on the part of father and the mother's failure to protect the children endanger the children's physical health and safety and places the children at risk of physical harm, damage, and failure to protect."

The children's counsel asked the juvenile court to dismiss counts a-1 and b-1, arguing, "The allegations in those counts relate to Mother's former male companion, who has been out of the picture for five months now. So the concerns are not current." Mother's counsel joined the children's counsel in asking the court to dismiss counts a-1 and b-2, adding, "[Andrew]'s whereabouts are currently unknown. He is not in a relationship with Mother and nobody has seen him since this incident occurred." DCFS argued there was sufficient evidence to sustain counts a-1 and b-1.

The juvenile court dismissed count a-1 and sustained count b-1, amending the latter count by deleting the sentence relating to the June 1, 2013 incident between Andrew and Father and the next sentence regarding Mother's failure to protect, and

substituting the words “mother’s male companion” for the word “father” in the last sentence. The sustained count b-1 reads: “On 06/01/2013, and on prior occasions, the children, J[.]C[.], S[.]C[.], G[.]C[.] and C[.]C[.]’s mother, Judy G[.] and the mother’s male companion, Andrew O[.], engaged in violent altercations in the children’s presence. On a prior occasion, the male companion broke a window in the children’s home and entered the children’s home. On a prior occasion, the male companion threatened to harm the mother and the children. Such violent conduct on the part of mother’s male companion and the mother’s failure to protect the children endanger the children’s physical health and safety and places the children at risk of physical harm, damage, and failure to protect.”

The juvenile court declared Mother and Father’s four children to be dependents of the court, but ordered them placed in Mother’s home under DCFS’s supervision. The court ordered DCFS to provide family maintenance services to Mother and ordered Mother to enroll in and complete parenting education, individual counseling to address domestic violence, and a domestic violence support group for victims. The court also ordered DCFS to provide referrals to Father and ordered Father to complete programs to address case issues. The court awarded Father monitored visitation.

On July 18, 2014, after this appeal was filed and briefing completed, the juvenile court terminated dependency jurisdiction over Mother and Father’s four children and issued a family law order. On the court’s own motion, we take judicial notice of the juvenile court’s July 18, 2014 minute order terminating jurisdiction. The July 18, 2014 minute order, does not set forth the terms of the family law order.

Although the juvenile court no longer has jurisdiction over Mother and Father’s children in these dependency proceedings, we will not dismiss as moot Mother’s appeal challenging the jurisdictional findings against her. These findings could be prejudicial to Mother in the future if DCFS becomes involved with this family again.

DISCUSSION

Mother contends there is insufficient evidence supporting the juvenile court’s jurisdictional findings under section 300, subdivision (b), regarding violent altercations

between her and Andrew, and Andrew's possession and use of drugs in the children's presence.

“““When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. [Citation.] In making this determination, all conflicts [in the evidence and in reasonable inferences from the evidence] are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.]” [Citation.] While substantial evidence may consist of inferences, such inferences must rest on the evidence; inferences that are the result of speculation or conjecture cannot support a finding. [Citation.]” (*In re Precious D.* (2010) 189 Cal.App.4th 1251, 1258-1259.)

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.)

Domestic Violence (Count b-1)

Before sustaining count b-1, the juvenile court deleted the allegation regarding the June 1, 2013 physical altercation between Andrew and Father. Thus, the sustained jurisdictional finding in count b-1 (quoted above) is based on violent altercations between Andrew and Mother in the children's presence, Andrew breaking a window and entering the family home, and Andrew threatening to harm Mother and the children.

Prior to DCFS filing the petition at issue on appeal, the children had consistently reported Andrew yelled at Mother and shouted profanities at her, but none of the children

reported any physical violence between Andrew and Mother. G.C. told the social worker Andrew threatened to hurt Mother. S.C. told the social worker Andrew threatened to hurt one of the children after the June 1, 2013 altercation with Father, but the circumstances and specifics of this threat were not made clear. Although the yelling frightened the children and caused some to have nightmares, this is not a sufficient showing to sustain a jurisdictional allegation under section 300, subdivision (b). Serious physical harm to the child or a substantial risk of serious physical harm to the child is necessary. (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717-718.)

After DCFS filed the petition, S.C. told the dependency investigator the last time she saw Andrew he “grabbed [Mother’s] wrist and smashed her fingers” as Mother was telling him to leave her home. Father told the investigator he saw Andrew “restraining” Mother and “pushing her into the bathroom by her arms” on June 1, 2013, prior to Father’s altercation with Andrew. Thus, S.C. and Father were the only two people who reported any physical altercation between Andrew and Mother, and they each witnessed one physical altercation occurring immediately before Mother filed the restraining order against Andrew. Father also claimed he once saw bruises on Mother’s face and arms on a date not specified, and he assumed Andrew had inflicted the bruises.

The juvenile court’s finding Andrew “broke a window in the children’s home” is not supported by substantial evidence in the record or any evidence at all. G.C. reported Andrew “broke *in* through a window” when Mother refused to open the front door for him. (*Italics added.*) The record shows Andrew entered the home through a window without consent, not that he broke a window in the family home in order to enter. There is no evidence indicating any violent altercation occurred after Andrew entered the home through the window.

We do not find the children were ever at substantial risk of serious physical harm based on Andrew’s shouting and threats of harm, one incidence of him grabbing Mother’s wrist and smashing her fingers, one incidence of him restraining Mother and pushing her by her arms, and one incidence of him entering the home through a window without consent. Nor do we find Father’s account of hearing gun shots being fired

somewhere near Mother's home at some point after Andrew left Mother's home on June 1, 2013, to be substantial evidence Andrew might harm the children. There is insufficient evidence demonstrating Andrew fired the shots.

“Physical violence between a child's parent[and companion] 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.*, *supra*, 192 Cal.App.4th at p. 717.) Even assuming there was *ongoing* physical violence between Andrew and Mother during their relationship—which the record does not demonstrate—there is no evidence indicating violence between Andrew and Mother would continue after Mother terminated her relationship with Andrew and filed a restraining order on June 4, 2013, a month before DCFS filed the dependency petition. By December 13, 2013, the date the juvenile court adjudicated count b-1, it was undisputed Mother had not seen Andrew in more than six months. DCFS's speculation Mother might again enter into a relationship fraught with domestic violence given her history with Father is not a sufficient basis for the juvenile court to assume jurisdiction over the children.

Andrew's Possession and Use of Drugs (Count b-2)

By October 23, 2013, the date the juvenile court adjudicated count b-2, Mother had not seen Andrew in four and one-half months. Thus, there is no evidence his past possession and use of marijuana or other drugs in the children's presence posed a substantial risk of physical harm to the children.

We reverse both jurisdictional findings against Mother for lack of substantial evidence. On June 3, 2013, DCFS asked Mother to enter into a safety plan under which Mother agreed to obtain a restraining order against Andrew, to disallow Andrew from entering her home and being around her children, and to decline to engage in verbal and physical altercations with a partner in the presence of the children. Mother complied with the safety plan. Nonetheless, on July 1, 2013, DCFS filed a dependency petition with jurisdictional allegations against Mother. The juvenile court erred in sustaining the allegations against Mother because, at the time of the October 23 and December 13, 2013

jurisdictional hearings, there was no evidence the children were at substantial risk of serious physical harm from Andrew's conduct. Mother's relationship with him was in the past and there is no evidence indicating Mother was engaging in conduct which posed a risk to the children.

DISPOSITION

The jurisdictional findings as to Mother are reversed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

MILLER, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.