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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re R.T., a Person Coming Under  
the Juvenile Court Law.

B269803

(Los Angeles County  
Super. Ct. No. BK02302)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.J.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Emma Castro, Juvenile Court Referee. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County  
Counsel, and Jacklyn K. Louie, Principal Deputy County Counsel, for  
Plaintiff and Respondent.

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M.J. appeals from the juvenile court's jurisdictional finding that his mental illness placed his son, R.T., at substantial risk of serious physical harm. (See Welf. & Inst. Code, § 300, subd. (b).) Appellant also challenges the court's disposition order, contending there was insufficient evidence to remove R.T. from parental custody. (See Welf. & Inst. Code, § 361, subd. (c).) We affirm the jurisdictional findings, and conclude that the challenges to the disposition order are moot.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### ***A. Referral and Detention***

#### *1. Events preceding the section 300 petition*

On February 13, 2014, Los Angeles County Department of Children and Family Services (DCFS) received a referral alleging emotional abuse and general neglect of two male siblings: R.T., then 12 years old, and G.J., then 16 years old. The caller alleged R.T. had been hospitalized for a nasal infection that had extended into his brain. On the day R.T. was scheduled to be discharged, his mother, Evelyn T. (Mother), requested that the hospital keep the child until she was able to move into a new apartment. Mother claimed there were "demons and spirits at the [current] apartment that liked to throw things." Mother showed hospital staff a video of the "spirits," which appeared to show her older son G.J. throwing objects. The caller also reported the children's father, M.J. (Father), had "severe mental issues," and that R.T. had made "bizarre" comments about having seen a floating guitar inside the apartment. The parents' landlord informed the caller that the family lived in unsanitary conditions, which the parents blamed on the "spirits."

DCFS interviewed several hospital employees about the allegations. An emergency room social worker reported that Mother had said she and G.J. slept outside the apartment "due to the spirits in the home." Mother also said she intended to keep sleeping outside until the family moved to a new apartment.

A hospital nurse reported that R.T. initially visited the emergency room on January 11, 2014 with "what appeared to be a sinus infection and was

sent home.” The child returned to the hospital three days later, “and it was discovered that the infection had spread to [his] brain.” A neurosurgeon was called to remove pus that had gathered in R.T.’s brain. Following the procedure, R.T. remained hospitalized and was continuing to receive antibiotics through an intravenous line. A hospital “home team” was scheduled to visit the family’s apartment and train them to administer the intravenous antibiotics. However, shortly before the visit, Mother told hospital personnel the apartment was “not suitable” for R.T. because “of spirits in the home.”

DCFS interviewed R.T. in the hospital. The child stated that he lived in a motel with Mother, G.J. and “sometimes” Father. R.T. indicated he could not return to the motel because “[t]here [were] spirits there.” R.T. said he had seen his brother’s guitar “play a tune by itself,” explaining that “the strings on the guitar [had] mov[ed] with no one playing it.” R.T. also said his family told him they had seen objects flying around the apartment, and that there were “holes in the ceiling . . . from the spirits throwing cans in the air.” G.J. and Mother both told R.T. they had been struck by the cans. Although R.T. had not seen the spirits throw any objects, he claimed to have seen spirits “c[o]me down from the ceiling” and “from the television.” R.T. denied hearing voices, or “having any past or present suicidal or homicidal thoughts.” R.T. told DCFS he had never been physically disciplined, and had never seen his parents engage in domestic violence or use drugs. R.T. said he felt safe in his parents’ care, and that they always provided sufficient food to eat.

DCFS visited Mother at the family’s motel room, which was “extremely cluttered, dirty and unorganized.” DCFS observed potatoes and a broken hot plate on the floor, and several plants that had trash in their pots. The motel room was also filled with smoke from sage Father had been burning to “ward off evil spirits.”

Mother informed DCFS the family intended to move to room eight because their current room was inhabited by “spirits and demons.” Mother pointed out several “half crescent dents” in the ceiling that were allegedly caused by cans the spirits had thrown. Mother also reported the spirits had “thrown potatoes,” and smashed a hot plate appliance against the wall.

Mother told DCFS the family had been living at the motel for the past five months, and that the spirits had been present for the last month. Mother reported that she and G.J. had both been hit by cans, and were currently sleeping on the back porch. Mother also stated that she had asked “Chaplain Felix,” who worked at the Beacon Light Mission, to come to the home. According to Mother, Chaplain Felix had “informed the family that he heard voices over a telephone from the spirits saying that they should have killed [R.T].”

Mother stated that she had been diagnosed with depression in 2007, but was not currently taking medication or receiving treatment. She also stated that Father had been diagnosed with bipolar disorder, and was not receiving treatment. Mother reported that Father used marijuana, but did not smoke inside the motel room. Mother denied ever using physical discipline with her children, and denied hearing voices or experiencing suicidal or homicidal thoughts.

DCFS also interviewed G.J., then 16 years old, who thought the social worker had come to the motel because of the “paranormal activity with the spirits.” G.J. reported that the spirits had been throwing cans and other objects around the motel room. G.J. stated that he and his Mother had begun sleeping on the back porch because they were afraid of the spirits. He played the social worker a video of the “spirits,” which showed Father walk into the room with incense, and then showed Mother claiming to have been hit with a can. G.J. explained that a beeping sound heard on the video was an “EMF detector” used to detect spirits. G.J. denied hearing any voices, or having experienced any suicidal or homicidal thoughts. He also denied any prior diagnosis or treatment for mental illness.

G.J. informed DCFS that Mother took R.T. to the hospital whenever he got sick. G.J. also said Mother and Father always provided enough food, and had never engaged in physical discipline or domestic violence. He stated that his Father smoked marijuana outside the motel room, and had a medical license to use the drug. G.J. denied ever using drugs. Although he was enrolled in high school, G.J. had not attended class for the past month due to his brother’s medical condition.

DCFS also interviewed Father, who reiterated most of the information Mother had provided. Father claimed the spirits had damaged the motel room by throwing cans, potatoes and other objects. He also claimed Chaplain Felix had said “he heard voices over the telephone that stated [the spirits] should have killed [R.T.] and other horrible things.” Father said he had been diagnosed with bipolar disorder, and occasionally went to “mental health” to get his medication. He denied hearing voices, having hallucinations or experiencing suicidal or homicidal thoughts. Father admitted he smoked marijuana, and provided DCFS a copy of his medical marijuana card. He informed DCFS that the family would like to live in room eight “so that they can bring [R.T.] home and take care of him.”

DCFS also interviewed the motel manager, who reported that the family had been living at the property “on and off” for years. The manager said they had recently started complaining about “spirits.” On one occasion, the parents brought the manager into the room to show him the spirits. The manager saw Father “quickly throw a can into the air and it hit the ceiling.” The parents tried to convince the manager the spirits had thrown the can. The manager believed Father was teaching Mother and the children “how to throw the cans.”

The manager said he had initially told the family they could move to room eight, which was newly remodeled, because he thought it would be good for R.T. However, when the motel owner discovered the parents’ current room had been damaged by cans, he would not allow the manager to move them into room eight. DCFS contacted the owner, who reported that he was preparing to evict the family as a result of the damage they had caused to their room. The owner also reported he had recently called the police because Father had threatened to burn the building down.

DCFS interviewed Chaplain Felix, who had met the family at the Beacon Light Mission. Felix stated that he spoke with Mother on the phone while she was at the hospital visiting R.T. During the call, Felix asked Mother to put R.T.’s physician on the phone. Mother put Felix on hold, and the phone was then disconnected. Mother immediately called Felix back “and stated she heard a voice on the phone that sounded like [Felix] that made negative comments about [R.T.] such as ‘You’re going to regret this’ and

statements referring to the child dying.” Felix told Mother he had not made those statements. Felix also told DCFS the parents had informed him there were “‘spirits in the dwelling’ that ha[d] thrown knives and other objects at the ceiling.”

## *2. Section 300 petition and detention*

On February 20, 2014, DCFS filed a petition alleging G.J. and R.T. fell within the jurisdiction of the juvenile court under Welfare and Institutions Code section 300, subdivision (b).<sup>1</sup> The petition included three counts under subdivision (b). The first count (b-1) alleged Mother had untreated “mental and emotional problems, including a diagnosis of depression” that rendered her unable to care for the children, and placed them at “risk of physical harm, damage and danger.” The second count (b-2) included substantially identical allegations against Father, asserting that he had a prior, untreated “diagnosis of bi-polar” that rendered him incapable of caring for the children, and placed them at substantial risk of physical harm. The third count (b-3) alleged Father had a “history of illicit drug abuse and is a current user of marijuana.” Count three further alleged Mother had failed to protect the children from Father’s drug use, which “endanger[ed] the children’s physical health.”

In support of the petition, DCFS filed a detention report summarizing its interviews with hospital personnel, the family members, the motel manager and Chaplain Felix. The detention report indicated R.T. was still being held in the hospital, and that G.J. had been placed in a group foster home.

The report disclosed the parents had a “long history of involvement with Child Protective Services in Los Angeles and Baton Rouge, Louisiana.” According to the report, Mother had eight other children who had been removed from her custody and were now adults. The prior child welfare history listed seven prior referrals involving Mother and Father. Two referrals related to Mother’s now-adult children. The other five related to

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<sup>1</sup> Unless otherwise noted, all further statutory citations are to the Welfare and Institutions Code.

G.J. and R.T. In 1997, two referrals were filed alleging “general neglect” of G.J.; both were deemed “unfounded” or “inconclusive.” Another referral was filed in 2001 alleging Mother had tested positive for marijuana immediately after giving birth to R.T. The allegations were substantiated, and the children were taken into protective custody. They were returned to the parents in January of 2003. A 2006 referral alleged Mother had tried to put a tattoo on G.J., causing bruising on his arms and legs. The parents were reportedly uncooperative with DCFS: Mother fled to Louisiana with G.J., and Father was later arrested with R.T. Mother eventually returned to California, and the 2006 case was dismissed. Finally, in 2010 DCFS received a referral for general neglect after the family was found living under a tarp. The allegations were deemed inconclusive, and the children were again returned to the parents.

In its recommendation and evaluation, DCFS concluded the parents were unable to provide R.T. the “sterile, neat and clean environment” he required for his intravenous antibiotic treatments. DCFS further asserted that the parents’ “untreated mental illness,” “neglect [of G.J.’s] . . . education[al] needs” and “twenty-five year history with the DCFS” demonstrated a “lack of concern for the children’s safety.” DCFS recommended a wide range of services for Mother, Father and the children, including individual counseling, parenting classes, substance abuse treatment and psychiatric evaluations of each family member.

At the detention hearing, the juvenile court found DCFS had made a prima facie showing the children were persons described in section 300, and that leaving them in the home of parents would create a substantial risk to their physical health or emotional well-being. The court permitted monitored visitation, and ordered the children and parents to undergo a physical and psychiatric assessment. The matter was set for a contested jurisdiction and disposition hearing on March 6, 2014.

## ***B. Jurisdiction and Disposition***

### *1. DCFS's jurisdiction/disposition report*

On March 4, 2014, DCFS provided a “Jurisdiction/Disposition Report” summarizing additional interviews it had conducted during its investigation. G.J., who remained in a foster home, denied that he had been neglected by his parents. He remained adamant that “paranormal activity” had caused “cans, TVs [and] VCRs” to be “thrown all over the place.” G.J. played DCFS a video that purportedly showed the “spirits.” The images in the video showed books falling through the air, and the front half of a shoe moving across a bed. The video did not show what was causing the objects to move. G.J. reported that neither of his parents took any medication. He admitted Father used marijuana, but not “in the house” or “around” any other family members.

DCFS also interviewed R.T., who had been discharged from the hospital and placed in a foster home where he was continuing to receive intravenous antibiotic treatments. R.T. told DCFS he thought the agency had placed him in the foster home because the family’s motel room was inhabited by spirits. He reported that Mother had shown him a video of the spirits, and that he “knew for a fact” there were spirits present at the motel. R.T. did not believe his parents took any medication, and had never seen them use drugs. DCFS reported that both children appeared to be “developing appropriately.”

DCFS reported both parents were refusing to cooperate with the investigation, and had refused to sign forms authorizing a mental health examination of their children. On February 26, 2014, Mother told DCFS she would not talk to any more social workers, “that everything in the Detention Report was lies” and that she intended to prepare her own report. Later the same day, Mother sent a series of texts stating that R.T.’s life was in danger while in the care of DCFS, and that DCFS and the juvenile court had subjected her to “mental abuse.” On February 27, Mother informed DCFS neither she nor Father would meet with the agency.

DCFS also interviewed the motel manager, who reported that the parents would be leaving the property at the end of the month. The manager



stated that Father brought him into the motel room to show him the spirits. However, all the manager saw was “the three of them [Mother, Father and G.J.] throw stuff.” The manager believed the parents were teaching G.J. “to do it. To lie [about the spirits].”

In its assessment and evaluation, DCFS reported that “it was unknown if the family[] home’s unsanitary condition caused [R.T.] to get an infection.” Hospital staff, however, believed “the parents acted appropriately in dealing with [R.T.’s] illness, as they brought him to the Emergency Room with a sinus infection initially, then returned several days later when [R.T.’s] condition did not improve.” DCFS nonetheless concluded the parents’ “mental and emotional problems” rendered them incapable of caring for the children. According to DCFS, its investigation made “clear that both the mother and father have severe mental health concerns that are affecting the family’s level of functioning. The parents have failed to maintain a suitable living environment for the children. Further, the parents’ mental health appears to be negatively affecting the children as they now also believe that there are spirits in the home throwing things and creating a hazardous environment.” DCFS also asserted that Father was an “abuser of marijuana,” and that Mother had failed to protect the children from his drug use. DCFS concluded the children were “not safe in the home” because the parents had “failed to address the[ir] problems,” and refused to cooperate with the agency, making any further assessment of their mental condition impossible. DCFS recommended the court sustain the petition, order the children removed from the home and deny reunification services pursuant to section 361.5, subdivision (b)(10).

## *2. Hearing on jurisdiction and disposition*

G.J. was the only witness who testified at the jurisdiction and disposition hearing, held March 10, 2014. G.J. stated that his parents had always provided him with sufficient food and clothing, and always met his other needs. G.J. further testified that his parents had never physically abused him. He felt safe in their care, and he wanted to continue living with them.

The court found both children were persons described in section 300, subdivision (b). Although the court acknowledged that mental illness was not

in itself a proper basis for jurisdiction, it concluded that DCFS's evidence showed the parents' illness was threatening the children's emotional well-being, explaining: "[I]t is the emotional toll I would be most focused on. It seems the mental-health issues . . . can have an impact on the safety, the health, and the emotional well being of the child and can also result in some emotional abuse, not the least of which was . . . this notion that there are spirits who might heap some harm on one of the children to the extent of even killing of the children. [*Sic.*] If there are mental health issues and if there are those kinds of thoughts flying around, I think we ought to be very concerned about what kind of toll it would take on this family. . . . So I am going to sustain the counts as pled. . . . I will find by a preponderance of the evidence that count b-1, b-2 and b-3 of the petition to be true as alleged and, therefore, find the children to be persons described by . . . section 300."

The court also ruled that returning the children to the parents' care would create a substantial risk to their physical or emotional well-being and that there were no reasonable means by which the children could be protected without removing them from their parent's physical custody. The court did, however, permit reunification services, which included monitored visits and mental health counseling. The court scheduled a six-month review hearing (see § 366.21, subd. (e)) on September 8, 2014.

Mother and father appealed the court's jurisdiction and disposition orders, arguing in part that the juvenile court erred when it found jurisdiction under section 300, subdivision (b) based on risk of emotional harm to the children.

### ***C. Six-Month Review Hearing***

While the parents' appeals were pending, DCFS submitted a "Status Review Report" in preparation for the six-month hearing. DCFS reported that during the review period, the parents had refused to participate in services. DCFS also reported that the parents had been "uncooperative" and "verbally abusive." Mother had repeatedly threatened staff members at DCFS and at R.T.'s foster home. Father had threatened DCFS that he intended to do "something" if the agency did not move R.T. out of the foster home. R.T.'s foster home reported overhearing conversations in which

Mother had instructed the child that it was “okay for him not to listen to the staff and that he can be disrespectful if he wants to . . . . Mother also made threats to staff that she would do harm to them.”

DCFS also reported R.T. had been moved from several different foster homes due to “behavior issues and being defiant with the foster parents.” Personnel from R.T.’s prior foster homes stated that he instigated fights with other children, and was “argumentative.” DCFS also reported that R.T. had “fabricat[ed] statements” that his foster homes failed to provide him sufficient food or medical care. According to DCFS, R.T.’s mental health issues and behavioral problems were making it difficult to locate a permanent placement for him. The child’s school was also having difficulty determining “where to place the youth because he [wa]s behind academically.” In April of 2014, a psychologist diagnosed R.T. with “Adjustment Disorder with Mixed Disturbance of Emotions and Conduct, Mental Disorder Secondary to Seizure Disorder, and Oppositional Defiant Disorder.”

DCFS’s report also stated that the parents had failed to comply with any of the court-ordered services, which included taking prescribed psychotropic medications, undergoing a psychiatric assessment and submitting to random drug testing. Mother’s therapist reported that she had only attended one therapy session, and was “all over the place” during the meeting. The therapist explained that Mother had “told . . . some bizarre stories,” and said that she did not need any medication. The parents had also declined to attend any visits with R.T.

In its assessment and evaluation, DCFS concluded the parents’ “bizarre and erratic behaviors” made it unsafe for the children to return to the parents’ home. DCFS further noted that the parents’ refusal to comply with the court’s orders had made it impossible for the agency to gather any additional information regarding their mental health history. DCFS requested that the court issue an order requiring both parents to undergo an Evidence Code section 730 psychological evaluation (section 730 evaluation) to determine their “mental health needs, level of functioning and to determine what services will be most beneficial for the family.”

On September 8, 2014, the court ordered the parents to undergo a section 730 evaluation, and continued the six-month review until April of 2015.

#### ***D. Reversal of the Juvenile Court's Jurisdiction and Disposition Orders***

Prior to the six-month review hearing, we issued a decision reversing the juvenile court's jurisdiction and disposition orders. (See *In re G.J.* (Jan. 21, 2015, B255155) [nonpub.].) In our analysis, we concluded the juvenile court had erred by finding jurisdiction under section 300, subdivision (b) based on risk of emotional harm to the children, rather than physical harm. We further concluded that because the court had made no finding as to whether the children were at risk of physical harm, the proper remedy was to reverse the jurisdictional findings, and remand the matter to permit a new jurisdiction hearing on counts b-1 and b-2. We dismissed count b-3, which alleged Father's marijuana abuse placed the children at substantial risk of physical harm, concluding that the record contained no evidence supporting such a finding.

After our remittitur issued, the juvenile court scheduled a new jurisdiction and disposition hearing on June 9, 2015.

#### ***E. Post-Appeal Proceedings***

##### ***1. Jurisdiction proceedings***

##### ***a. DCFS's second jurisdiction and disposition report***

In preparation for the second jurisdiction hearing, DCFS filed a new "Jurisdiction/Disposition Report." DCFS reported that G.J. had turned 18 years old, and moved out of the foster home. The agency was uncertain where he was currently residing. DCFS interviewed G.J. shortly before he had left the foster home. G.J. informed DCFS he could not remember why he had been removed from his parents' custody. When asked whether anything "out of the ordinary" had occurred at the motel where he had lived with his parents, G.J. stated: "The spirits was the only thing I seen what's going on." G.J. explained that "cans and stuff was getting thrown around. My dad got hit with a can in the side of the head. And my mom almost got hit with a can. . . . Basically, my dad was watching TV. We were both there. A can just

came and hit him in the head.” G.J. also stated that he was “almost hit” with a potato, and that he had seen the television “move[],” and his guitar “play[] by itself.”

G.J. also stated that he remembered sleeping outside with Mother, explaining that his Father remained inside “blessing the house with holy water and reading the Bible. It was getting out of control with the cans. Stuff was just flying. My mom told me it wasn’t safe. [So] me and my mom slept outside on the bench.” G.J. also said he had not felt safe living in the motel, and was fearful “in a way” that he might get hit with an object.

DCFS interviewed R.T. in May of 2015, who, like his brother, could not recall why he had been removed from parental custody. R.T. stated that prior to his removal, he had lived with his parents in a “nice, beautiful house.” R.T. said the property manager told his family there was “stuff going on there and someone died in that house and that it wasn’t suitable to live in.” R.T. claimed Mother had “caught something [terrible] on camera. . . It was black and something clearly went across it. Something on the floor. I can’t explain it. And she pulled up the history of the place and it showed that three or four people died in each bedroom.” When asked for further explanation regarding Mother’s comments, R.T. stated that Mother had “looked up the name of the apartment on the internet and it said four people died there, and one of the bedrooms we were living in [sic].” R.T. also stated that he had seen “food” thrown around the room, and that his father had been hurt after being “hit in the forehead.” R.T. said that despite those events, he felt safe in the motel when his parents were there.

DCFS met with Mother on May 5, 2015, when she came to retrieve a bus pass from the agency. During the meeting, Mother refused to shake the case social worker’s hand. On May 22, 2015, Mother left the social worker a message stating that DCFS should be investigating whether her children had been abused in their foster homes, and questioned why they had been removed from parental custody. Mother also told the social worker to stop calling her or her sister regarding the investigation.

Mother told her therapist she did not believe there was anything wrong with her, and that she was “not interested in taking any medication.” The therapist told DCFS he “suspect[ed] that [M]other is delusional,” explaining

that she had tried to convince him to speak with friend of hers who would confirm that spirits lived in her house. The therapist stated that Mother had spoken with him only once, and had failed to attend her psychological evaluation. DCFS reported that Father “had not made himself available to the Department, and efforts to contact him ha[d] been unsuccessful.” The parents had not attended a single monitored visitation with R.T. or G.J. The children, however, indicated that they had “accidentally” run into Mother at the mall “two weekends in a row.”

DCFS noted that both parents had presented inconsistent information regarding their prior mental health history and diagnoses, and failed to comply with the courts’ orders requiring them to undergo a psychiatric evaluation. The parents had also refused to release any information regarding their prior medical history. DCFS concluded that the evidence gathered during the investigation demonstrated Mother and Father had “severe mental health [problems] that are affecting the family’s level of functioning and putting the children at risk of physical harm.” DCFS also believed the parents’ mental condition had been “negatively affecting” the children by causing them to believe there were sprits in the home throwing things.

In its assessment and evaluation, DCFS concluded G.J. and R.T. were not safe in the parents’ home, explaining that Mother and Father had: (1) “failed to address the problems that brought their family to the attention of the Department and the Court”; (2) exhibited “mental health issues that have not been addressed”; (3) failed to “cooperat[e] with the Department”; (4) “refused to undergo any type of assessment”; and (5) “continue[d] to display behaviors that put the children at risk of physical harm.” DCFS recommended that the court declare R.T. a dependent child, order him removed from the parents’ home and terminate jurisdiction over G.J. because he had “subsequently turned [18].” DCFS also recommended that the court terminate reunification services under section 361.5, subdivision (b)(10) because both parents had failed to reunify with numerous prior children, and had not “made a reasonable effort to treat the problems that led to the removal of the children[.]”

*b. Jurisdiction hearings*

At a hearing held June 8, 2015, the court terminated proceedings with respect to G.J., who had turned 18, and continued the jurisdiction hearing for R.T. until September 14, 2015. On that date, DCFS filed a last-minute information notifying the court that a due diligence search had been completed for Father, and that his “whereabouts remained unknown.”

After additional continuances, R.T.’s jurisdiction hearing was held on December 16, 2015. No witnesses testified at the hearing. DCFS requested the court sustain counts b-1 and b-2, arguing that it had presented evidence showing that both parents suffered from “mental health issues” which placed R.T. at risk of physical harm. In support, the agency relied on witness statements indicating that cans of food had been thrown around the family home, and that Mother had said she heard voices referencing the death of R.T. R.T.’s counsel joined in the agency’s request to sustain the petition.

Mother’s counsel, however, argued that all of the allegations in the dependency petition were based on events that had occurred in February of 2014, which were now “remote in time” and did not qualify as “evidence of current risk of harm.” Counsel emphasized that the record showed R.T. had always felt safe in the parents’ care, and had his medical needs were “taken care of when he became ill.” Father also opposed jurisdiction, arguing that the events at issue had happened two years ago, and that Father’s mental health issues and his “belief in spirits” were “not enough . . . to constitute any harm to the child.”

The court sustained counts b-1 and b-2, and ordered R.T. to remain detained from his parents. The court explained that DCFS had identified multiple, “direct safety threats” to R.T.’s physical well-being: “That the mother and father . . . threw cans and objects around the motel room, and in doing so, flying objects could have harmed the child . . . who was present. Also the threats mentioned by the mother . . . regarding death threats against R.T. are very concerning. The information in the [jurisdiction report] makes clear to the court that the parents do suffer from mental and emotional problems, and father has been diagnosed with a mental health diagnosis. And today I have no reason, based on the evidence that was presented a year ago, to believe that the risk of physical harm to [R.T.] has

dissipated and that it no longer exists. So based on the information before me today, the court does believe that based on the parents' mental illness, the child is at . . . substantial risk of suffering serious physical harm. So the court finds the child to be a person described by [section] 300(b)."

The court, however, elected to continue reunification services, and scheduled a "contested disposition" on February 9, 2016. The court directed DCFS to submit a "disposition report to address the parents' current involvement, if any, in mental health services and to address visitation between R.T. and his parents, [and] to address an assessment of the parents' current ability to have visitation monitored or unmonitored." On January 8, 2016, father filed a notice of appeal referencing the court's jurisdictional findings.

## *2. Disposition*

Prior to the disposition hearing, DCFS filed a report stating that Mother and Father had not established a regular visitation schedule with R.T. DCFS also reported that during an interview on January 7, 2016, Mother had "talked at length about issues not pertaining to the questions being asked and had difficulty focusing on what . . . was [being] asked of her." Mother also drew picture of "what the indentations looked like on the ceiling of the motel room that she claims were caused by the cans hitting the ceiling." Mother informed DCFS she was currently living with her 41-year-old son, who she claimed was "still [under the] custody of" DCFS and in need of "mental health." Mother did not believe she needed a mental health evaluation, and denied ever having received one. When asked about the motel she had been residing at when R.T. was detained, Mother provided a long, disjointed answer describing "things that went on in the home . . . that she had never seen in her life." DCFS had been unable to contact Father, who had "made [no] effort to contact [the agency] regarding R.T. or the current court proceedings."

In its assessment and evaluation, DCFS recommended the court order R.T. detained from his parents because "[M]other continues to have mental health concerns that have not been addressed," and Father had "failed to make himself available to the Department for assessment." DCFS also



recommended that any visits between the parents and R.T. remain monitored, and that the court deny reunification services pursuant to section 361.5, subdivision (b)(10).

At the February disposition hearing, both parents requested that the court return R.T. to their care. Counsel for R.T. stated that the child also wanted to return to his parents. R.T. testified that he felt safer with his parents than in a foster home, and that they had always taken good care of him: “They never intend to do any harm or anything unsafe to me. They have always been sure I went to school and got my education. They make sure I bathe, and they took care of me very well.”

The court ordered R.T. removed from the parents, finding by clear and convincing evidence that returning the child to the home would present a “substantial danger [to his] physical health, safety and protection[,] and there are not reasonable means by which [he] may be protected without removing the child from the custody of his parents.” Contrary to DCFS’s recommendation, however, the court continued reunification services, and further ordered both parents to obtain a section 730 evaluation. The court explained to the parents that the psychiatric evaluations were necessary to enable the court to “determin[e] when and under what circumstances . . . it is safe to have R.T. return home.”

### *3. Subsequent order placing R.T. with Mother*

While this appeal was pending, the juvenile court held a twelve-month review hearing pursuant to section 366.21, subdivision (f). Following the hearing, which occurred on March 15, 2017, the court issued an order terminating its prior placement orders regarding R.T.; placing him in the home of Mother; and allowing Father to reside in the home.<sup>2</sup>

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<sup>2</sup> On April 14, 2017, we notified the parties that we intended to take judicial notice of the March 15, 2017 order, and that the order might be of substantial consequence to the determination of aspects of the appeal. Pursuant to the requirements set forth in Evidence Code section 459, subdivision (c), we invited both parties to submit a letter brief presenting “any information relevant to (1) the propriety of taking judicial notice of the

## DISCUSSION

Father appeals the juvenile court's jurisdictional finding that his mental health problems render him incapable of providing regular care for R.T., and place the child at substantial risk of physical harm. He also challenges aspects of the court's February 9, 2016 disposition order, including the decision to remove R.T. from parental custody.<sup>3</sup>

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matter and (2) the tenor of the matter to be noticed.” (Evid. Code, § 452, subd. (a).) Acting on our own motion, we now take judicial notice of the March 15, 2017 minute order. (See Evid. Code, §§ 452, subd. (d) & 459, subd. (a); *In re C.C.* (2009) 172 Cal.App.4th 1481, 1487, fn. 3.)

<sup>3</sup> As summarized above, Father's notice of appeal, filed January 7, 2016, only references the jurisdictional findings. The court did not hear or decide the issue of disposition until February 9, 2016. Father did not file a separate notice of appeal from the disposition order. As a general rule, “[t]he jurisdictional finding under section 300 . . . is interlocutory and not appealable, and thus any issue pertaining to it must be raised in a timely appeal of the dispositional order.” (*In re Javier G.* (2005) 130 Cal.App.4th 1195, 1199-2000; see also *In re Athena P.* (2002) 103 Cal.App.4th 617, 624 [the first appealable order in a dependency proceeding ““is the dispositional order””].) Because Father appealed the court's jurisdictional findings before the court issued a disposition order, the appeal was premature. California Rule of Court 8.406(d), however, sets forth the following rule for appeals from judgments or orders in cases brought under section 300: “A notice of appeal is premature if filed before the judgment is rendered or the order is made, but the reviewing court may treat the notice as filed immediately after the rendition of judgment or the making of the order.” Thus, although Father's appeal from the jurisdictional findings was technically premature when filed, rule 8.406 provides us authority to treat the notice as having been filed after the operative judgment (the disposition order) was rendered. We may therefore properly construe the notice as a timely appeal seeking review of the jurisdictional aspect of the disposition order. (Cf. *In re Tracy* (1987) 195 Cal.App.3d 107, 112 [“a notice [may] specify[] a certain part of the judgment”].)

It is less clear whether Father's notice of appeal provides us jurisdiction to review the court's February 9, 2016 disposition order, which was decided several weeks after Father filed his appeal. (Cf. *In re Ricky H.* (1992) 10

## ***A. The Jurisdictional Findings are Supporteded by Substantial Evidence***

### *1. Summary of applicable legal principles*

“In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings . . . , we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings . . . of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.] “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].” [Citation.]” [Citation.]” (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

To establish jurisdiction under section 300, subdivision (b), DCFS must prove by a preponderance of the evidence that “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness” caused by any of the following: “the failure or inability of the [parent] to adequately supervise or protect the child”; “the failure to provide the child with adequate food, clothing, shelter, or medical treatment”; or “the inability to provide regular care for the child due to the parent’s mental illness, developmental disability or substance abuse.” (§ 300, subd. (b).)

“The statutory definition [therefore] consists of three elements: (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the minor, or a ‘substantial risk’ of such harm or illness.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) The

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Cal.App.4th 552 [notice of appeal seeking review of order terminating reunification services could not be construed to encompass a subsequently-decided order terminating parental rights].) However, we need not address that issue because, as discussed below, Father’s challenges to the disposition order have been rendered moot by the juvenile court’s subsequent orders.

third element “requires a showing that at the time of the jurisdiction hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur). [Citations.]” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396.) “[P]ast conduct may be probative of current [risk]’ if there is reason to believe that the conduct will continue.” (*In re S.O.* (2002) 103 Cal.App.4th 453, 461.) However, “[p]revious acts of neglect, standing alone, do not establish a substantial risk of harm; there must be some reason beyond mere speculation to believe they will reoccur.’ [Citations.]” (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1025.) DCFS “has the burden of showing specifically how the minors have been or will be [physically] harmed.” (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318.)

*2. The juvenile court’s jurisdictional findings are supported by substantial evidence*

In his briefing, Father acknowledges the record contains substantial evidence that he and Mother “suffer from mental illness, and are untreated,” and that they both “believe spirits and demons [caused] cans and potatoes [to be thrown] around the [family home].” Father argues, however, that the record does not contain sufficient evidence to support the court’s finding that his and Mother’s untreated mental illness rendered them incapable of providing regular care to R.T., or placed the child at substantial risk of serious physical harm. (See *In re A.G.* (2013) 220 Cal.App.4th 675, 684 [“harm may not be presumed from the mere fact of mental illness of a parent”].)

We disagree. Although Mother and Father blamed “spirits” for throwing cans in the motel room, DCFS presented evidence that the parents were in fact responsible for throwing the cans. The motel manager reported that when the parents had brought him into the room to see the “spirits,” he had observed Father “quickly throw a can into the air and it hit the ceiling.” The manager also stated that he had seen Mother, Father and G.J. “throw[ing] stuff,” explaining: “I could see them throw it, but they’d say it wasn’t them.” There is also evidence that Mother and Father had caused G.J. and R.T. to believe that “spirits” were throwing the cans of food. Both children told DCFS they believed the spirits, rather than their parents, were

responsible for the can throwing, and asserted that the parents had shown them videos of the spirits.

The evidence in the record also demonstrates that the cans were thrown with substantial force, causing “holes” and “half-crescent dents” in the ceiling. Multiple family members reported that Father had been hit in the head with a can, and that G.J. and Mother had also been struck. G.J. also informed DCFS he and Mother had started sleeping outside because “it was getting out of control with the cans,” and Mother no longer felt safe sleeping inside. Additional witness statements suggest other objects were thrown around the family home, including knives, potatoes, a hot plate, a television and a VCR.

The record also contains evidence indicating that Mother claimed to have heard the spirits threaten R.T. In an interview on February 13, 2013, Mother asserted that Chaplain Felix had told her he heard “the spirits saying that they should have killed [R.T.]” Chaplain Felix, however, informed DCFS that Mother had told him she had heard a voice that sounded like Felix referring to R.T. dying. Felix denied ever having made any such statement. During an interview in May of 2015, R.T. also reported that Mother had told him the family home was not a suitable place to live because “three or four people [had] died in each bedroom.” R.T. also claimed Mother had recorded images of a “terrible” “black” spirit that lived in the household.

Finally, the record demonstrates that Mother and Father refused treatment for their mental illness, and refused to undergo a court-ordered psychological evaluation. Moreover, a therapist who had briefly met with Mother reported that she appeared “delusional,” and had tried to force the therapist to speak with a person who would verify the spirits were real.

In sum, the record contains sufficient evidence to support the following findings: (1) the parents regularly threw cans around the home, which caused damage to the ceiling; (2) the parents blamed these actions on “spirits,” and convinced their children that the spirits were real; (3) Father was hit in the head with a can, and Mother and G.J. had also been hit; (4) Mother had previously made G.J. sleep outside because of the dangers associated with the can throwing; (5) Mother claimed she heard the spirits threaten R.T., and had informed R.T. that numerous people had died in the family home; (6)

Mother and Father refused to provide any information regarding their mental health problems, refused to participate in treatment and refused to undergo psychological evaluation. Considered together, this evidence is sufficient to support the juvenile court's finding that the parents' mental health problems rendered them incapable of providing regular care to R.T., and placed the child at substantial risk of serious physical harm.

***B. Father's Challenges to the Disposition Order Are Moot***

Father has also challenged two aspects of the court's disposition order, asserting that: (1) there was insufficient evidence to remove R.T. from parental custody; and (2) the court abused its discretion when it required that visits between Father and R.T. be monitored.

On March 15, 2017, however, the juvenile court terminated its prior placement orders regarding R.T., and ordered him placed in the home of Mother. The court also permitted Father to reside in the home. Because Father is now permitted to reside with R.T., the issues raised in his challenge to the disposition hearing are now moot.

**DISPOSITION**

The juvenile court's jurisdictional findings are affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.