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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SEVEN

In re JONATHAN A., a Person Coming  
Under the Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ANTHONY H.,

Defendant and Appellant.

B284649

(Los Angeles County  
Super. Ct. No. DK20777)

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

Daniel G. Rooney, under appointment by the Court of  
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis,  
Assistant County Counsel, and Julia Roberson, Deputy County  
Counsel, for Plaintiff and Respondent.

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## INTRODUCTION

Anthony H., the 17-year-old father of 10-month-old Jonathan A., appeals from the juvenile court's findings declaring his son a dependent of the court under Welfare and Institutions Code section 300, subdivision (b).<sup>1</sup> Anthony argues substantial evidence does not support the juvenile court's finding that his substance abuse put Jonathan at a substantial risk of serious physical harm. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. *Investigation*

Katherine A. and Anthony were 15 and 16 years old, respectively, when their son Jonathan was born in June 2016. Katherine and Jonathan lived with Rosa R., Jonathan's maternal grandmother. Three months after Jonathan was born, Rosa R. contacted the Los Angeles County Department of Children and Family Services to express several concerns. Rosa R. stated that Anthony had "caused a lot of problems for them," was "on house arrest," and had been accused of sexually assaulting another girl. Rosa R. had previously moved with Katherine to Las Vegas to "keep [Anthony] away from [Katherine's]" daughter, but he had "tracked them down." Rosa R. told the Department that Anthony "isn't a good man" and had a history of drug use and that she suspected Katherine used drugs as well.

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

On November 29, 2016 Rosa R. contacted the Department again to report that Anthony had come to her home to visit Jonathan and spent the night there, even though Anthony was on house arrest and knew he was not permitted in Rosa R.'s home. Rosa R. called the police, who told her Anthony was not trespassing because Katherine had let him into the house. Rosa R. also reported that Katherine recently had been caught shoplifting and had a court date. Rosa R. also said Katherine had refused to take Jonathan to the doctor when he developed respiratory issues, despite her family's urging, and, after a relative finally convinced Katherine to take Jonathan to the emergency room, the doctors diagnosed the baby with bronchitis. Rosa R. also reported that most of the time she took care of feeding Jonathan and changing his diapers, while Katherine would take Jonathan out late at night in cold weather and sleep until 1:00 p.m.

The Department interviewed Katherine, who admitted she had stolen a cake from the market and received a citation. Katherine also acknowledged Anthony had come to their home early one morning "to see his son," even though Katherine knew Anthony should have not been there. Katherine's brother told the Department that Katherine lets Anthony into the house even though he is not allowed and that "Anthony has always been the problem." He stated Anthony is a drug addict, has mental health issues, and is currently on house arrest.

Anthony's aunt and legal guardian, Julia C., told the Department Anthony "has his own issues and he isn't doing well." Julia C. stated Katherine plays "mind games" with Anthony, stalks him, and "uses threats that he can't see the baby." She denied Anthony was "on drugs," but stated that in May 2016 the

police detained him “due to alcohol poisoning.” Julia C. also reported that Anthony takes sertraline for “his ADHD, anger management, and poor impulse control.”

Anthony’s probation officer’s report, dated July 28, 2016, revealed six pending criminal charges, including four for stealing alcohol from a grocery store on “numerous” occasions in May and June 2016. The report also included a felony second degree robbery charge based on a July 2016 incident where Anthony pushed a classmate and forcibly stole her cell phone. When the police arrested him, he admitted that he had stolen from the grocery store on more than one occasion and that “his behavior was getting out of control.” Anthony also admitted that he was taking alprazolam, drinking beer, and smoking marijuana “a lot” and that there were “some things he simply could not remember.” His probation officer told the Department Anthony had been on house arrest since August and, as of December 13, 2016, had twice violated the terms of his house arrest. An August 3, 2016 minute order from the juvenile court in Anthony’s delinquency proceeding detailed the “conditions of [his] probation,” which, among other things, included that Anthony abstain from drinking alcohol and using drugs, submit to on-demand drug and alcohol testing, and participate in substance abuse and anger management counseling.

The probation officer’s report also indicated Anthony had recently been removed from school because of “numerous behavioral issues” and had been diagnosed with several “mental health issues,” including that he was “emotionally disturbed.” The school reported that, prior to his removal, Anthony had failing grades in most of his classes and poor attendance.

B. *Petition and Detention*

On December 20, 2016 the Department filed a petition alleging Jonathan came within the jurisdiction of the juvenile court under section 300, subdivision (b). The Department alleged in count b-1 that Anthony had “a history of substance abuse and is a current abuser of alcohol, marijuana and prescription medication,” rendering him incapable of providing regular care and supervision of Jonathan, who was six months old at the time and “of such tender age as to require constant supervision.” The Department alleged that Anthony’s substance abuse endangered Jonathan’s physical health and safety and placed Jonathan at risk of serious physical harm and that Katherine knew, or reasonably should have known, of Anthony’s substance abuse and failed to protect Jonathan.

Both parents attended the detention hearing. The court released Jonathan to Katherine on condition she comply with her mother’s house rules, obey curfew, and take parenting classes. The court ordered Anthony to have monitored, twice-weekly visits with Jonathan. The court also ordered Anthony to receive teen parent services and low-cost or no-cost family reunification referrals and submit to random and on-demand drug testing.

C. *Jurisdiction and Disposition*

In its February 2017 jurisdiction and disposition report, the Department stated Anthony had been placed in juvenile hall after his latest arrest in January 2017 for taking a car without permission. Anthony had not had any visits with Jonathan or contact with the Department since the December 2016 hearing. Katherine, on the other hand, was “doing quite well,” according to Rosa R., who felt Katherine’s behavior had improved since the

Department's involvement. Katherine told the Department that the allegations in count b-1 were "for the most part . . . true" and that Anthony had smoked marijuana "for quite some time."

On April 4, 2017 a Department investigator met with Anthony, who was still in juvenile hall awaiting his delinquency court hearing to determine whether he would be sent to a juvenile camp. Anthony said that he had been in contact with Katherine, who sent him photographs of Jonathan, and that he wanted "to visit with his son when he is released and wants to be part of his son's life moving forward." Anthony's probation officer reported that Anthony had disciplinary issues at juvenile hall, which the officer believed would lead the court to send him to a juvenile camp.

On April 11, 2017 the juvenile court held a combined jurisdiction and disposition hearing. The court admitted into evidence various documents submitted by Katherine, including certificates and letters demonstrating her participation in various parenting programs. Anthony appeared in custody and did not submit any evidence. Counsel for Anthony argued there was no dependency jurisdiction because there was no "nexus between any type of bad behavior and bad conduct and a risk to the child." Counsel for Anthony noted that Anthony had not seen Jonathan since the last hearing and that Katherine had stated she "has no intent of reuniting" with Anthony, "which dispenses largely with the prospect of a future risk of harm."

The court sustained the petition,<sup>2</sup> declared Jonathan a dependent of the court, and released him to Katherine on condition she remain in Rosa R.'s home. Anthony timely appealed.<sup>3</sup>

## DISCUSSION

### A. *Applicable Law and Standard of Review*

Section 300, subdivision (b)(1), provides for juvenile court jurisdiction where “[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 inability of the parent or guardian to provide regular care for the child due to the parent’s . . . substance abuse.” Section 300.2 provides that “a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and

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<sup>2</sup> Although the court found true the allegations Katherine knew of Anthony’s substance abuse and failed to protect Jonathan, the court struck Katherine from the petition and sustained count b-1 as amended against Anthony.

<sup>3</sup> Katherine also filed a notice of appeal. Her appellate counsel, however, filed a brief raising no issues. We gave Katherine notice she could submit a letter or brief raising any ground of appeal, contentions, or arguments she wanted us to consider and advised her that failure to submit a letter or brief within 30 days would result in dismissal of her appeal as abandoned. We did not receive a response from Katherine, and on December 22, 2017 we dismissed her appeal. (See *In re Phoenix H.* (2009) 47 Cal.4th 835, 838; *In re Sade C.* (1996) 13 Cal.4th 952, 994.)

emotional well-being of the child.” The purpose of dependency proceedings is not only to protect children from current abuse or neglect, but also “to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm.” (§ 300.2; see *In re I.J.* (2013) 56 Cal.4th 766, 773; *In re T.V.* (2013) 217 Cal.App.4th 126, 133.) Thus, “[a]lthough section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing [citations], 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 Kadence P.* (2015) 241 Cal.App.4th 1376, 1383; see *In re I.J.*, at p. 773 [“section 300 does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction”]; *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1215-1216 (*Christopher R.*) [same].) “The focus of section 300 is on averting harm to the child.” (*In re T.V.*, at p. 133; see *In re I.J.*, at p. 773; *Christopher R.*, at p. 1216.) Moreover, the “[e]xercise of dependency 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 Kadence P.*, at p. 1384.)

In evaluating the risk of future harm, “[a] parent’s past conduct is a good predictor of future behavior.” (*In re T.V.*, *supra*, 217 Cal.App.4th at p. 133; see *In re Kadence P.*, *supra*, 241 Cal.App.4th at pp. 1383-1384 “[a] parent’s “[p]ast conduct may be probative of current conditions” if there is reason to believe that the conduct will continue”]; *Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216 “[t]he court may consider past events in deciding whether a child presently needs the court’s protection”].)



However, “there ‘must be some reason beyond mere speculation to believe the alleged conduct will recur.’” (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 993.)

“We review the juvenile court’s jurisdiction findings and disposition order for substantial evidence. [Citations.] 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 Kadence P.*, *supra*, 241 Cal.App.4th at p. 1384; see *Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216.) ““In making this determination . . . 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.”” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773; accord, *In re Yolanda L.*, *supra*, 7 Cal.App.5th at p. 992.) “Thus, we do not consider whether there is evidence from which the juvenile court could have drawn a different conclusion but whether there is substantial evidence to support the conclusion that the court did draw.” (*In re M.R.* (2017) 8 Cal.App.5th 101, 108.)

““Substantial evidence is evidence that is ‘reasonable, credible, and of solid value’; such that a reasonable trier of fact could make such findings.”” (*In re D.C.* (2015) 243 Cal.App.4th 41, 52; see *In re F.S.* (2016) 243 Cal.App.4th 799, 811; *In re S.A.* (2010) 182 Cal.App.4th 1128, 1140.) “[P]arties challenging the juvenile court’s findings and orders . . . bear the burden to show there was no evidence of a sufficiently substantial nature to

support those findings and orders.” (*In re M.R.*, *supra*, 8 Cal.App.5th at p. 108; see *In re D.C.*, at p. 52; *In re T.V.*, *supra*, 217 Cal.App.4th at p. 133.)

B. *Substantial Evidence Supports the Juvenile Court’s Finding That Anthony’s Substance Abuse Created a Substantial Risk of Serious Harm*

Anthony contends the juvenile court erred in exercising jurisdiction over Jonathan under section 300, subdivision (b)(1), because there was no substantial evidence Anthony’s substance abuse created a substantial risk of serious harm to Jonathan. Anthony argues he “never physically harmed Jonathan in the past and evidence he would in the future was whisper thin.” Although there was no evidence Anthony had yet harmed Jonathan, there was substantial evidence Anthony’s substance abuse rendered him incapable of caring for his infant son and created a serious risk to the young child’s health and safety.

For children of “tender years” under the age of six, “the finding of substance abuse . . . is prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of physical harm.” (*Christopher R.*, *supra*, 225 Cal.App.4th at p. 1220; accord, *In re Kadence P.*, *supra*, 241 Cal.App.4th at p. 1385; *In re Drake M.* (2012) 211 Cal.App.4th 754, 767 (*Drake M.*); *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) In such cases, the Department needs “only to produce sufficient evidence that the [parent] was a substance abuser” to support dependency jurisdiction. (*Drake M.*, at p. 767; see *In re Kadence P.*, at p. 1385 [evidence of a parent’s drug use created a substantial risk of harm to the infant child, even though the child had not yet been harmed]; *Christopher R.*, at p. 1220 [young

father's "persistent and illegal use of marijuana" demonstrated "an inability to provide regular care" for his infant daughter, regardless whether the father's "repeated scrapes with the law were directly related to his chronic marijuana use"].)

Here, the Department submitted substantial evidence of Anthony's substance abuse. Anthony does not challenge this evidence and does not argue he was not a substance abuser.<sup>4</sup> Thus, the Department's showing of substance abuse shifted the burden to Anthony to "adequately rebut that evidence" and show he was able to provide regular care for Jonathan. (See *Christopher R.*, *supra*, 225 Cal.App.4th at p. 1219.) He did not.<sup>5</sup>

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<sup>4</sup> Nor could he. As noted, Anthony admitted he took alprazolam, drank beer, and smoked "a lot" of marijuana, to the point where he could not remember things or control his behavior. Katherine confirmed that Anthony had smoked marijuana "for quite some time" and that the Department's allegations about Anthony were "for the most part" true. Katherine's brother reported that Anthony was addicted to drugs, his legal guardian admitted the police "picked [Anthony] up" for alcohol poisoning, and the delinquency court ordered him to submit to drug and alcohol testing and to undergo substance abuse counseling. Anthony also repeatedly broke the law to get alcohol.

<sup>5</sup> Relying on *In re Rebecca C.* (2014) 228 Cal.App.4th 720, Anthony argues the juvenile court could not presume a risk of harm from substance use "or even abuse." *Rebecca C.*, however, involved a 13-year-old child, and the court found the mother's substance abuse did not cause a substantial risk of harm to her teenage daughter based on evidence that, despite a recent drug relapse, the mother was fulfilling her parental obligations. (*Id.* at p. 727.) *Rebecca C.* did not involve the risk a parent's substance

Moreover, the record before the juvenile court revealed more than just substance abuse. In addition to his criminal history, Anthony exhibited poor judgment and impulse control regarding his son, as evidenced by his decision to visit Jonathan by violating the terms of his probation and sneaking into Rosa R.'s home, where he knew he was not permitted, and staying overnight, causing Rosa R. to call the police. (See *In re A.F.* (2016) 3 Cal.App.5th 283, 291 [mother's "poor judgment," which the court could reasonably conclude was a result of her substance abuse, placed minor at risk].) In addition, Anthony's probation officer reported that Anthony "suffers from anger management issues, A.D.H.D. and impulsive disorder," which his legal guardian confirmed. And there was no evidence Anthony participated in any parenting classes, attended the substance abuse and anger management counseling sessions as ordered by the delinquency court,<sup>6</sup> or had any monitored visits with Jonathan. (See *In re Cole C.* (2009) 174 Cal.App.4th 900, 918 [parent's failure to accept voluntary service referrals or participate in visits with the child in a structured setting supported the finding of risk of future harm to the child]; see also

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abuse creates for an infant or toddler in need of constant attention and supervision. (See *Christopher R.*, *supra*, 225 Cal.App.4th at p. 1216.)

<sup>6</sup> Anthony's probation report, which predated the order in his delinquency proceeding, indicated "it appears that [Anthony] attends counseling through the Hathaway Sycamore Counseling Group," but there is no evidence of the nature or extent of such counseling.

*In re John M.* (2012) 212 Cal.App.4th 1117, 1126-1127 “[t]he juvenile court could infer these were recurring problems, and nothing in [the parent’s] situation had changed to suggest that they would not continue in the future”].) The evidence showed Anthony’s substance abuse, poor judgment, and impulse control issues remained unabated and put Jonathan at a substantial risk of harm.<sup>7</sup>

Finally, Anthony contends the juvenile court erroneously “invoked jurisdiction based on the finding the parents would benefit from services,” which Anthony asserts “is not a proper basis for exercising jurisdiction.” While the need for services, without more, is not a proper basis for dependency jurisdiction (see *In re Isabella F.* (2014) 226 Cal.App.4th 128, 139), the juvenile court’s observation that, “if anyone needs the services of the Department, at this point, [it is] young teen mothers who have young babies,” does not negate the finding that Anthony’s conduct created a substantial risk of harm under section 300, subdivision (b). And, as noted, substantial evidence supported the latter finding. (See *In re Z.G.* (2016) 5 Cal.App.5th 705, 720 [“we review the court’s ruling, not its reasoning”].)

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<sup>7</sup> Although Katherine told the Department in January 2017 she had “no plans to reunite with [Anthony],” Anthony stated that, as of April 4, 2017, he and Katherine had been in contact “by letter,” she was “sending him pictures of [Jonathan],” and he “would like to visit with [Jonathan] when he is released and wants to be part of his son’s life moving forward.” The court could reasonably infer that Anthony, upon his release from detention, would try to see Jonathan and Katherine.

## **DISPOSITION**

The jurisdiction findings and order are affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.