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IN THE COURT OF APPEAL OF THE STATE OF  
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In the Matter of JULIET F., A  
Person Coming Under Juvenile  
Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

IVONNE M. et al.,

Defendants and Appellants.

B294856  
(Los Angeles County  
Super. Ct. No. 17CCJP01728)

APPEAL from an order of the Superior Court of Los  
Angeles County. Kristen Byrdsong, Commissioner.  
Affirmed.

Ernesto Paz Rey, under appointment by the Court of Appeal, for Defendant and Appellant Ivonne M.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and Appellant Miguel F.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Jacklyn K. Louie, Deputy County Counsel for Plaintiff and Respondent.

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## INTRODUCTION

Miguel F. and Ivonne M. (“Parents”) challenge the juvenile court’s jurisdictional finding as to their infant daughter Juliet F. under Welfare and Institutions Code section 300, subdivision (j) (hereinafter Section 300(j)).<sup>1</sup> We affirm.

Parents have an extensive history with the Department of Children and Family Services (“DCFS”). Prior to Juliet’s birth in August 2018 and the petition DCFS filed shortly thereafter regarding her (“Petition”), DCFS had investigated Parents several times on other allegations of abuse or neglect starting in 2012. Two such investigations led to Parents’ agreeing to voluntary family maintenance services, and one such investigation led to DCFS’s filing a

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<sup>1</sup> All further undesignated statutory references are to the Welfare and Institutions Code.

section 300 petition that the court sustained, resulting in the removal of Parents' other children. When DCFS filed the Petition in this case, Parents' other children were still in foster care, and Parents were working on reunifying with them.

DCFS's Petition alleged that Juliet's siblings were dependents of the court due to Parents' history of violent altercations as well as Ivonne's history of substance abuse, and that Juliet was at substantial risk of being abused.

On December 18, 2018, over Parents' request to dismiss the Petition due to an alleged failure of proof, the court followed the recommendation of DCFS and Juliet's counsel, dismissing the counts of the Petition filed under section 300, subdivisions (a) and (b), but sustaining the counts alleged under Section 300(j). The court did not remove Juliet from Parents, but ordered them to take certain parenting classes, undergo counseling, and in the case of Ivonne, continue drug treatment and submit to random drug tests. Parents filed timely notices of appeal.

On appeal, Parents contend: (1) the Petition failed to state sufficient facts to constitute a cause of action under Section 300(j); and (2) substantial evidence does not support the court's finding of jurisdiction under Section 300(j). As detailed below, we conclude: (1) Parents have forfeited any objection that the Petition failed to state sufficient facts to constitute a cause of action under Section 300(j); and (2) substantial evidence supports the court's jurisdictional finding.

## **STATEMENT OF RELEVANT FACTS**

### ***A. The Family***

Miguel and Ivonne have six children: Cristal, Alan, Janely, Jose, Ana, and Juliet. At the time the Petition was filed in September 2018, the eldest was eight years old and Juliet was a newborn.

### ***B. Parents' Previous Encounters with DCFS and the Juvenile Court***

Parents came to the attention of DCFS and the juvenile court prior to the filing of the Petition. On January 6, 2014, DCFS received a referral alleging emotional abuse and general neglect of Cristal, Alan, Janely, and Jose (Ana had not yet been born), after Ivonne had gotten into a fight with a relative. Following an investigation, DCFS concluded the emotional abuse and general neglect allegations were substantiated. This led to Parents' agreeing to voluntary family maintenance services from January 15, 2014, to November 20, 2014.

On April 11, 2016, DCFS received another referral alleging emotional abuse and general neglect by Ivonne. Specifically, Ivonne allegedly threatened to stab two of her children when she found a number for another woman in Miguel's cell phone. In wrestling the knife away from Ivonne, Miguel sustained several scratches to his chest and ear, and Ivonne sustained bruises to her arm and a bump on her head. Ivonne denied the incident, and Miguel stated he "probably" misinterpreted Ivonne's statements. DCFS deemed the emotional abuse allegation inconclusive but

deemed the general neglect allegation substantiated. This led to another round of voluntary family maintenance services.

On September 18, 2016, while the family was still receiving voluntary family maintenance services, DCFS received a report of emotional abuse and general neglect by Ivonne. In front of Alan and Cristal, Ivonne allegedly punched Miguel twice in the nose. Ivonne also admitted to the reporting party that she had used “just a little bit” of methamphetamine two days prior, and the reporting party suspected Ivonne was using methamphetamine in the presence of her children. Further, Ivonne called her children “dog” or “stupid” and would say things such as “I’m sick and tired of you guys,” “You guys are the dogs of your dad,” and “He [referring to Miguel] doesn’t love you guys.” On September 20, 2016, Ivonne tested positive for amphetamines and methamphetamines. DCFS deemed the emotional abuse allegation inconclusive but deemed the general neglect allegation substantiated. DCFS removed the children on September 30, 2016, and filed a section 300 petition on October 5, 2016. The court made jurisdictional findings on December 14, 2016, finding Ivonne punched Miguel in front of the children, used marijuana, amphetamine, and methamphetamine rendering her incapable of caring for the children, and tested positive for amphetamine and methamphetamine while caring for the children. The court again ordered family maintenance services for the family and enhancement services for Ivonne. It released the children to Miguel.

On August 21, 2017, DCFS permitted Ivonne to move back into the family home. However, on November 3, 2017, the court approved a removal warrant as to Cristal, Alan, Janely, Jose, and Ana (who had been born September 19, 2017).<sup>2</sup> On February 15, 2018, the court ordered family reunification services for Ivonne and Miguel. At the time this appeal was filed, Parents and Juliet were living in a single bedroom they rented, Juliet's siblings remained in foster care, and a section 366.21, subdivision (f) permanency hearing regarding the siblings was scheduled for February 25, 2019.<sup>3</sup>

### ***C. The Current Petition***

Juliet was born August 10, 2018. A DCFS social worker visited the hospital that same day and observed that both Miguel and Ivonne appeared happy. Miguel properly held and fed Juliet, and Parents reported they had a car seat and baby supplies at home. They accepted the offer of a crib donation.

On August 22, 2018, a DCFS social worker visited Parents and Juliet in the bedroom they rented and observed that Juliet appeared cared for. Nevertheless, due to the

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<sup>2</sup> The record does not disclose the reason for the removal warrant.

<sup>3</sup> DCFS received several other referrals about the family, but after investigation, deemed the allegations either inconclusive or unfounded.

family's history, DCFS reported "the risk level at this time is moderate."

On September 7, 2018, DCFS filed a section 300 petition as to Juliet, citing subdivisions (a),<sup>4</sup> (b)(1),<sup>5</sup> and (j).<sup>6</sup>

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<sup>4</sup> Section 300, subdivision (a) provides that the court may adjudge a child "to be a dependent child of the court" if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm. . . ."

<sup>5</sup> Section 300, subdivision (b)(1) provides that the court may adjudge a child "to be a dependent child of the court" if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. . . ."

<sup>6</sup> Section 300(j) provides that the court may adjudge a child "to be a dependent child of the court" if "[t]he child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or

*(Fn. is continued on the next page.)*

Specifically, DCFS alleged Ivonne and Miguel had a history of violent altercations:

- On October 18, 2017, Miguel repeatedly slapped Ivonne in the face, and kicked her in the shin, leaving a bruise. Ivonne and Miguel repeatedly pushed each other. Parents engaged in this altercation in front of Jose (Juliet's brother), who was three years old at the time.
- In 2016, Ivonne punched Miguel in the face.
- Cristal, Alan, Janely, Jose, and Ana (Juliet's siblings) were all current dependents of the court due to Parents' violent conduct.

The Petition also alleged Ivonne struck Ana in the buttocks when she was one-month old, which was excessive and caused Ana unreasonable pain and suffering, and Miguel failed to protect Ana. The court deemed Juliet's siblings to be dependents due to Ivonne's abuse and Miguel's failure to protect them.

The Petition additionally alleged Ivonne and Miguel abused Cristal, Alan, Janely, and Jose by striking their heads and backs, which was excessive and caused them

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(i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child."



unreasonable pain and suffering. Each parent knew or reasonably should have known of the abuse by the other parent and failed to protect the children.

Finally, the Petition alleged Ivonne had a history of substance abuse including marijuana, amphetamine, and methamphetamine, rendering her incapable of providing regular care and supervision of Juliet, and noting the other children were dependents due to Ivonne's substance abuse. The Petition noted Juliet was not detained.

Among other things, DCFS's September 10, 2018 detention report noted both Ivonne and Juliet tested negative for all substances at the time of Juliet's birth, and neither the hospital staff nor DCFS had concerns regarding Juliet herself or Parents' care of her. The report further noted that Parents were participating in couples' counseling and other programs, and Ivonne was keeping current on drug tests, with all results being negative or explained.<sup>7</sup> The report did note that Ivonne had not yet finished with her court-ordered programs, and while things appeared to be going well for the family, DCFS believed it was too early to release Parents from supervision. The report also noted that Ivonne had a history of mental health issues, making her especially vulnerable to postpartum depression, and that "recent changes in her life could add significant stress and

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<sup>7</sup> For example, after Ivonne received codeine at the hospital for pain when giving birth to Juliet, she tested positive for codeine.

put her at risk of a relapse.” The report additionally noted that Ivonne and Miguel “would not be opposed” to court and DCFS supervision for Juliet, and that they had admitted benefitting from the court-ordered services. On September 10, 2018, the court found a prima facie case that Juliet was a child described by section 300 and released Juliet to Parents.

On October 10, 2018, DCFS received an anonymous report, stating Ivonne and Miguel were arguing and verbally abusing each other and fighting in front of Juliet. The reporter alleged Miguel was violent, noting he would leave for a walk after a heated argument or fight. The reporter also alleged Ivonne sometimes took her frustration out on Juliet, yelling and screaming at her, and being impatient with her, causing her to cry a lot. The reporter suspected that Ivonne spanked Juliet. DCFS investigated. Parents denied the allegations and both the landlord from whom they were renting the bedroom and the family preservation worker assisting Parents denied seeing any such incidents or having any concerns. DCFS also conducted several unannounced visits and noted no issues. On one visit, Ivonne told DCFS that Juliet was the first child with whom she hadn’t lost her patience. She further stated she and Miguel were completing all necessary classes and things were going well. Miguel confirmed that he and Ivonne had worked hard to become better parents. However, while admitting some of the previous domestic violence, Miguel claimed the reports of violence had been too “drastic,” and denied that he had ever kicked Ivonne. DCFS eventually deemed the October 10 allegations of abuse unfounded.

On December 18, 2018, Ivonne and Miguel requested the court dismiss DCFS's petition, arguing it had failed to prove its case. Juliet's counsel argued the court should dismiss the counts under section 300, subdivisions (a) and (b), but sustain the counts under Section 300(j). DCFS concurred with the recommendation of Juliet's counsel. The trial court dismissed the counts brought under subdivisions (a) and (b) but sustained the counts brought under Section 300(j). The court ordered Juliet to remain with Parents, and ordered Parents to take certain parenting classes (with no need to repeat classes already taken), undergo counseling and, in the case of Ivonne, continue drug treatment and submit to random drug tests. The court set a June 18, 2018 hearing for a review under section 364. Ivonne and Miguel filed timely notices of appeal.

## **DISCUSSION**

### ***A. Parents Have Forfeited Any Objection to Whether the Petition Stated Sufficient Facts to Constitute a Cause of Action***

On appeal, Parents argue “[p]roperly pled counts under section 300, subdivision (j), must contain specific facts about parental non-compliance or failures to learn from services provided to the parents as well as specific facts about the effect of the parents’ failings on the sibling of the abused child. . . . Here, that was not done.”

“Allowing parties to challenge the facial sufficiency of a petition for the first time on appeal conflicts with the emphasis on expeditious processing of these [juvenile

dependency] cases so that children can achieve permanence and stability without unnecessary delay if reunification efforts fail. [Citation.] Enforcing the forfeiture rule requires parties to raise such issues in the juvenile court where they can be promptly remedied without undue prejudice to the interests of any of the parties involved. [Citations.]” (*In re Christopher C.* (2010) 182 Cal.App.4th 73, 83, quoting *In re David H.* (2008) 165 Cal.App.4th 1626, 1640.)

Neither Miguel nor Ivonne cites to any instance in the record demonstrating they ever challenged the sufficiency of the Petition in the juvenile court; nor does our independent review of the record disclose any such challenge. In fact, both waived a reading of the Petition and entered a general denial. At the adjudication hearing, Parents argued DCFS had presented insufficient evidence to sustain a finding of current risk to Juliet, but made no argument that the Petition itself stated insufficient facts. Because Parents failed to challenge the facial sufficiency of the Petition before the juvenile court, they have forfeited their right to challenge it on appeal.

### ***B. Substantial Evidence Supports the Court’s Jurisdictional Finding***

Section 300(j) provides a child is within the juvenile court’s jurisdiction if “[t]he child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect

of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.” “This ‘broad language . . . clearly indicates that the trial court is to consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm, within the meaning of any of the subdivisions enumerated in [section 300,] subdivision (j).” (*In re Ashley B.* (2011) 202 Cal.App.4th 968, 983, quoting *In re Maria R.* (2010) 185 Cal.App.4th 48, 64.)

Neither parent contests that Juliet’s siblings were “abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i).”<sup>8</sup> Instead, they argue substantial evidence does

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<sup>8</sup> Therefore, Parents’ citation to *In re Janet T.* (2001) 93 Cal.App.4th 377 and *In re Savannah M.* (2005) 131 Cal.App.4th 1387 is unhelpful. In *In re Janet T.*, the appellate court found that when the validity of a Section 300(j) count “was dependent on a sustained finding of a substantial risk of serious physical harm or illness under subdivision (b),” if “the allegations of the petition sustained under section 300, subdivision (b) are not sufficient to support jurisdiction . . . [i]t necessarily follows the sustained allegation of sibling abuse alleged under section 300, subdivision (j) must fail as well.” (*In re Janet T.*, *supra*, 93 Cal.App.4th at p. 391, fn. omitted.) Similarly, in *In re Savannah M.*, the juvenile court found jurisdiction over the minor’s sister under section 300, subdivision (b) due to the parents’ alleged neglect in failing to protect the sister from sexual abuse and found jurisdiction over the minor herself based on the parents’

(*Fn. is continued on the next page.*)

not support the court’s finding that there was a substantial risk Juliet would be abused or neglected. We disagree.

“In a challenge to the sufficiency of the evidence to support a jurisdictional finding, the issue is whether there is evidence, contradicted or uncontradicted, to support the finding. In making that determination, the reviewing court reviews the record in the light most favorable to the challenged order, resolving conflicts in the evidence in favor of that order, and giving the evidence reasonable inferences.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451.)

““[W]hen two or more inferences can reasonably be deduced from the facts, either deduction will be supported by substantial evidence, and a reviewing court is without power to substitute its deductions for those of the trial court.”” (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) “Evidence of past conduct, without more, is insufficient to support a jurisdictional finding under section 300. There must be some reason beyond mere speculation to believe the alleged conduct will recur.” (*In re James R.* (2009) 176 Cal.App.4th 129, 136.) But “[t]he court need not wait until a child is

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failure to protect the sister. (*In re Savannah M., supra*, at pp. 1392-1393.) Because the appellate court found substantial evidence did not support the finding of jurisdiction for the sister, it found substantial evidence necessarily also failed to support the finding of jurisdiction for the minor. (*Id.* at p. 1399.) Here, by contrast, the court sustained the petitions brought as to Juliet’s siblings, and there is no allegation or argument the court was incorrect in doing so.

seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.” (*In re I.J.* (2013) 56 Cal.4th 766, 773, quoting *In re R.V.* (2012) 208 Cal.App.4th 837, 843.)

Here, we agree with DCFS that while “[b]oth mother and father ha[d] made significant progress with their current court[-]ordered case plan,” the record also established a clear pattern of abuse, followed by improvement, followed by a relapse into abusive behavior.<sup>9</sup> In its detention report, DCFS noted that Parents “have extensive DCFS history and significant history of domestic violence.” For example, in January 2014 they were enrolled in voluntary family maintenance services after substantiated allegations of emotional abuse and general neglect of their children. As far as the record reveals, they completed such services in November 2014. In April 2016, there was a substantiated allegation of general neglect, when Ivonne threatened to stab Miguel and two of her children and Miguel was compelled to wrestle a knife away from her.

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<sup>9</sup> Thus, Parents’ reliance on *In re David M.* (2005) 134 Cal.App.4th 822 is misplaced. In *In re David M.*, the appellate court complained of an incomplete record and held “allegations sustained more than four years before the current jurisdiction hearing, standing alone, are not substantial evidence sufficient to support the juvenile court’s jurisdictional findings” under Section 300(j). (*In re David M.*, *supra*, at p. 832.) Here, the record demonstrates a pattern of Parents’ doing well and participating in court-ordered services, only to relapse into abuse.

This led to another round of voluntary services. While those voluntary services were being provided, in September 2016, Ivonne punched Miguel twice in the nose in front of the children, admitted to using “just a little bit” of methamphetamine, and insulted her children. DCFS detained the children, and the court eventually removed them from Ivonne. Three months after DCFS permitted Ivonne to move back home in August 2017, the court granted a warrant for the children’s removal. In other words, the record demonstrated that Parents’ “significant progress” had repeatedly been followed by regression to abuse.

Moreover, Ivonne was working toward reuniting with her five other children. If successful, she would be placed in the same circumstances that previously led to child abuse and drug use. In an interview with a DCFS social worker, Ivonne stated that in the past, “she found herself taking care of five little ones and that it was frustrating as she had no help as the father was working to provide for the family.” Ivonne further “stated that all this frustration led to yelling at the children and inappropriately disciplining them, as well as to turning to drugs, ‘meth and marihuana’, for almost 2 years.” If Parents were to successfully reunify with their other children, Ivonne would be taking care of not five, but six children. DCFS also noted Ivonne’s history of mental health issues and the risk of relapse into drug use.

Given Parents’ demonstrated pattern of participating in court-ordered programs and making progress only to return to abusing their children, and Ivonne’s heightened risk of relapsing into either drug use or child abuse, we find



substantial evidence supports the court's finding that at the time of the adjudication hearing there existed a substantial risk Juliet would be abused or neglected.<sup>10</sup>

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<sup>10</sup> Parents also argue the court's dismissal of the counts brought under section 300, subdivisions (a) and (b), "effectively [found] that there was not a substantial risk that [Juliet] would be abused or neglected, as defined in those subdivisions." (Emphasis omitted.) We are unpersuaded. The record is clear the court dismissed the counts at the request of DCFS and Juliet's counsel, not because it judged the counts to be without merit.

**DISPOSITION**

The court's jurisdictional order is affirmed.

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MANELLA, P. J.

We concur:

WILLHITE, J.

COLLINS, J.