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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re B.H., a Person Coming  
Under the Juvenile Court Law.

B295519

(Los Angeles County  
Super. Ct. Nos.  
18CCJP07473,  
18CCJP07473A)

LOS ANGELES COUNTY  
DEPARTMENT OF  
CHILDREN AND FAMILY  
SERVICES,

Plaintiff and Respondent,

v.

FRANCES H.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Pete R. Navarro, Juvenile Court Referee. Affirmed.

Roni H. Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Brian Mahler, Deputy County Counsel, for Plaintiff and Respondent.

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## INTRODUCTION

When B. was born prematurely in November 2018, he tested positive for cocaine and experienced symptoms of withdrawal. His mother, Frances H. (mother), was homeless, received no prenatal care, and admitted using cocaine and marijuana throughout the pregnancy. B. was detained and placed in foster care. By the time of the jurisdiction/disposition hearing in January 2019, mother had enrolled in an inpatient drug treatment program and was not using drugs. The juvenile court held that jurisdiction over B. was appropriate under Welfare and Institutions Code section 300, subdivision (b),<sup>1</sup> and ordered reunification services for mother. Mother appealed the jurisdiction finding, contending that the evidence did not show that B. was at risk of harm at the time of the January 2019 jurisdiction/disposition hearing.

We affirm the juvenile court's jurisdiction finding. B.'s exposure to illicit drugs in utero rendered him a child described by section 300, subdivision (b)(1), because he had suffered serious physical harm or illness as a result of mother's substance abuse while pregnant.

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

Mother also challenged the court's disposition order issued on the same date, January 16, 2019, ordering that B. remain in foster care. That order was superseded by an order issued in July 2019, which maintained the juvenile court's jurisdiction but placed B. in mother's care. Mother's challenge to the disposition portion of the January 16 order is therefore moot, and we do not address it.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Detention**

According to the detention report, the Los Angeles County Department of Children and Family Services (DCFS) received a referral after B. was born in November 2018, at 34 weeks gestation. Mother's toxicology screen was positive for cocaine; B.'s toxicology results were not yet available. Mother, age 35, had received no prenatal care. B. was in the neonatal intensive care unit (NICU) for low blood sugar.

Four days after B.'s birth, DCFS children's social workers (CSWs) went to the hospital to meet with mother and see B. B. had recovered from the low blood sugar issue, but was still in the NICU because the hospital did not want to release B. to mother due to the positive drug screen. B.'s drug screen results were positive for cocaine. B. exhibited drug withdrawal symptoms that were not severe enough to require medical intervention. Various nurses had observed mother attend some of B.'s feedings and reported that mother had acted appropriately with B. Nurse Siosan observed mother attend two feedings in a day and act appropriately; after the second, mother stated that a friend was downstairs waiting for her. When mother returned later in the day for a third feeding, she was "talking fast, scratching herself, pacing, acting erratic, she was all over the place." Nurse Siosan

thought that mother was likely under the influence of drugs at the time.

The hospital social worker reported that mother said she was motivated to get sober and wanted to keep the baby. The hospital social worker noted that mother told one nurse that she had been raped, told another nurse she had not been raped, and told a third nurse that she had been gang raped. Mother had provided the hospital case worker with the address of a friend, Stephanie H., with whom mother was staying temporarily.

On November 15, the CSWs went to Stephanie's address in an attempt to meet with mother. The CSWs "observed the door cracked open and the house to be cluttered with boxes and clothes throughout the house. The house appeared to be messy with trash on the table." Stephanie answered the door and denied the CSWs access to the house, stating that it was messy. She stated that mother had been living with her briefly, but she could not say how long. Stephanie said she thought mother would be an excellent mother and she had no concerns for B.'s safety.

A neighbor who had been at Stephanie's house, Wendy J., stated that mother was at the store and would be back shortly. When mother returned, the CSWs asked to confirm mother's identification; mother said she did not have an identification card. Mother also did not have a phone, because she had not paid the bill. The CSWs noted that as they spoke with her, mother "appeared sober," but was "anxious, nervous, and scratching herself throughout the interview."

Mother reported that she had used cocaine four days before delivering B. She said she did not know she was pregnant with B. until she was four months pregnant, when she started getting morning sickness. Mother said she had not sought prenatal care

“because she ‘did not know if she wanted to do everything all natural or with taking antibiotics.” Mother also said she did not have any health insurance, but she was planning to apply for welfare and other services. Mother said she had used cocaine for about two years, about twice per month; she said she had also used marijuana for about seven years, by smoking and taking edibles. Mother denied any substance use since B.’s birth. When asked about her erratic behavior at the hospital, mother stated that she had been nervous because she thought CSWs were coming to talk to her.

Mother expressed a willingness to take drug tests for DCFS and participate in a drug treatment program. Mother said she had already contacted four drug treatment programs, but none had availability. Mother said she had completed an eight-month, inpatient drug treatment program seven years earlier after being arrested for possession of marijuana. A criminal history report stated that mother had been convicted in 2003 for unauthorized possession of hypodermic needles and sentenced to 24 months’ probation; in 2010 she was convicted of possession of narcotics for sale and sentenced to 365 days in jail and 3 years’ probation.

Mother said she did not know who B.’s father was. Two men were possible fathers: one was named José (mother did not know a last name), and mother did not know the name of the other. Mother did not have an ongoing relationship with either man. Mother said that she had intended to allow B. to be adopted, but when she saw him she decided to keep him.

Later that day, one of the CSWs, Rachel Chan, met mother at the hospital to give her information for a drug test. CSW Chan observed mother with B., and reported that mother acted

appropriately and was happy to be with B. The drug test, which mother took on November 15, was positive for cocaine.

The hospital anticipated that B. would be ready for discharge on November 16. DCFS detained B., and arranged for him to be discharged to a foster home. The detention report stated that based on mother's active use of drugs while pregnant, her homelessness over the past year, her lack of drug treatment, and the very young age of B., allegations of neglect were substantiated and there was a high risk of future abuse.

On November 20, 2018, DCFS filed a juvenile dependency petition under section 300, subdivision (b)(1). The petition alleged in count b-1 that B. "was born suffering from a detrimental condition, consisting of withdrawal symptoms and a positive toxicology screen for cocaine," and mother's "use of illicit drugs endangers the child's physical health and safety and places the child at risk of serious physical harm and damage." Count b-2 alleged that mother "has a history of substance abuse and is a current substance abuser of cocaine and marijuana[,] which renders the mother incapable of providing care for the child." Count b-2 also stated that B. was "of such a young age requiring constant care and supervision and the mother's illicit drug abuse interferes with the mother's ability to provide regular care and appropriate supervision of the child. The mother's substance abuse endangers the child's physical health and safety and places the child at risk of serious physical harm and damage."

At the detention hearing on November 21, mother submitted on the issue of detention, but asked that B. be released to mother as soon as mother was enrolled in a drug treatment program. Her counsel argued that mother had been diligent in attempting to enroll in a treatment program, and "[s]he's on

several waiting lists.” Counsel said mother was compliant and very motivated to gain custody of B.

The court found a prima facie showing that detention was warranted. The court ordered that mother have monitored visitation, and gave DCFS discretion to liberalize. The court set an adjudication hearing for January 16, 2019.

#### **B. Jurisdiction and disposition**

The jurisdiction/disposition report dated January 16, 2019 stated that B. remained in foster care, where he appeared to be developing normally with no major medical issues. On November 26, 2018 mother had enrolled in a 90-day inpatient drug treatment program called Prototypes. After several attempts to contact mother, it appeared that the DCFS investigator spoke with mother briefly on December 14.<sup>2</sup> Mother visited with B. at Prototypes on December 16; no information about their interaction is noted in the report. On December 17, mother took a drug test with negative results. DCFS recommended that the court find jurisdiction over B., that B. remain in foster care, and that reunification services be provided to mother.

A last-minute information filed before the January 16, 2019 jurisdiction/disposition hearing stated that the DCFS investigator had interviewed mother by phone on January 11. Mother said she discovered her pregnancy at four months, and she “continued to use throughout her pregnancy.” She said she

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<sup>2</sup> The report stated that mother “did not make herself available to be interviewed for this report.” At the jurisdiction/disposition hearing, mother’s counsel asserted that mother did not know DCFS was trying to reach her, and asserted that the DCFS investigator’s efforts to reach mother were insufficient.

used cocaine twice per month, and her cocaine use on November 11 “sent me into labor.” Mother said she knew cocaine could harm the baby, but “that’s how bad my addiction was.” Mother said she went through a rough patch after she and her ex-husband separated, and he took all her money, including an inheritance from her family. Mother said she had not used cocaine since she gave birth. She had been attending drug and alcohol classes weekly at Prototypes and was “consistent and compliant with her programs.”

Mother had visits with B. for four hours on Sundays at Prototypes. Mother appeared to be bonding well with B., but she “needs constant reminders regarding how to attend to the child’s needs.” Mother struggled with things like propping up the bottle correctly to ensure B. was not sucking air, and wiping B. properly when changing his diaper. The caregiver reported having to re-address the same issues at each visit. DCFS recommended that B. remain in foster care, as mother was in the beginning stages of treatment, she had not made sufficient progress, and she needed time to “firmly establish her sobriety.”

At the jurisdiction/disposition hearing on January 16, 2019, mother called DCFS investigator Alice Pham to testify. Mother’s counsel questioned Pham about her efforts to contact mother and gather information for the jurisdiction/disposition report. On cross-examination, Pham testified that she also spoke with B.’s caregiver, who said that B. “has to be held 24/7, because whenever she tries to put him down, he would cry.” B.’s doctor said this was an effect of prenatal exposure to drugs.

Mother testified that she was enrolled in several different services at Prototypes, including 12 step, dialectical behavioral therapy, and moral recognizance therapy. Mother said she did



not know that the investigator was trying to reach her before they talked on January 11. Mother discussed some of her programs, including the 12-step program and moral recognition therapy, which related to personal responsibility. Mother testified that she was allowed to have children with her at Prototypes. Mother testified that at her once-per-week visits, she feeds B., changes his diaper, and burps him. Mother said she had done three drug tests for DCFS and eight tests for Prototypes, and none had been positive.

On cross-examination, mother acknowledged that her first drug test for DCFS had been positive, because she had taken cocaine the day of B.'s birth, and "[t]hat is what sent me into early labor." Mother testified that she used cocaine for three years. The court asked about mother's convictions in 2003 for possession of hypodermic needles and in 2010 for possession of narcotics for sale; mother admitted both.

Mother's counsel argued that the petition should be not be sustained because mother was enrolled in a drug treatment program and there was no current risk of harm to B. She also argued that the DCFS reports were not reliable because Pham only spoke with mother for ten minutes and did not provide sufficient information to support a jurisdiction finding. Counsel for B. asked that the petition be sustained based on B's positive toxicology test at birth, mother's positive test several days after B.'s birth, and mother's history of drug use. Counsel for DCFS joined B.'s argument. The court found sufficient evidence to sustain each count as alleged.

Regarding disposition, DCFS argued that B. should not yet be released to mother. DCFS pointed out that mother had a history of relapse after drug treatment, and asserted that it

would be traumatizing for B. to be released to mother only to go back to foster care if mother relapsed again. The court told mother it did not believe she had only been involved with drugs for three years in light of her convictions for drug-related offenses beginning 16 years earlier. The court said mother needed to show “some progress” before B. could be released to her.

The court found by clear and convincing evidence that there would be a substantial danger to B. if he were returned to mother’s care. The court ordered an additional two-hour monitored visit per week for a total of six hours, and gave DCFS discretion to liberalize visitation. The court also ordered mother to complete her drug treatment program. Mother timely appealed.

## **DISCUSSION**

### **A. Scope of appeal**

DCFS asserts that this court lacks jurisdiction to consider the jurisdictional portion of mother’s appeal because in her notice of appeal, mother stated that she was appealing from the “[d]ispositional order on 1/16/19.” Mother checked a box on the notice of appeal form stating that she was appealing from an order of “[r]emoval of custody from parent or guardian.” Mother did *not* check the corresponding box stating, “with review of section 300 jurisdiction findings.” DCFS asserts that mother appealed only the dispositional portion of the order, and “this Court should not construe the Notice of Appeal liberally to apply to the omitted portion of the judgment – the jurisdictional findings made by the court.”

Mother correctly points out that a “judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment” (§ 395, subd. (a)(1)), and “[t]he

dispositional order is the ‘judgment’ referred to in section 395.” (*In re S.B.* (2009) 46 Cal.4th 529, 532.) A “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, 1200.) Therefore, mother’s appeal from the “dispositional order” is accurate and legally correct; appealing the jurisdiction finding itself was not an option.

DCFS is correct that mother did not check the box on the notice of appeal stating that she was seeking review of the jurisdictional findings under section 300. However, “notices of appeal are to be liberally construed so as to protect the right of appeal if it is reasonably clear what [the] appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced.” (*In re Joshua S.* (2007) 41 Cal.4th 261, 272.) Liberal construction of a notice of appeal is “particularly appropriate” in a situation such as this one, where “the jurisdictional finding and dispositional order were rendered simultaneously.” (*In re Daniel Z.* (1992) 10 Cal.App.4th 1009, 1017.) Here, although mother did not check the box specifying that she was seeking review of the jurisdictional findings, she did specify that she was challenging the court’s January 16 order, which included the jurisdictional findings. Moreover, there was no danger that DCFS was prejudiced by the omission. Indeed, DCFS makes no such argument. Thus, we construe mother’s notice of appeal broadly to include the jurisdictional findings.

#### **B. Jurisdictional findings**

Mother asserts there was insufficient evidence to support the court’s jurisdictional findings. “In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional

findings and disposition, 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 and orders 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.”” (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

Mother contends the “uncontested evidence showed that the mother was not a current abuser of cocaine and marijuana at the time of the jurisdictional and dispositional hearing.” She points out case law stating that “the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824.) She acknowledges B. was born with a positive toxicology screen and withdrawal symptoms, but asserts that at the time of the hearing, mother was not a drug abuser and therefore the jurisdictional finding was erroneous.

Indeed, “[t]here are many cases holding that when a dependency petition alleges jurisdiction under section 300, subdivision (b)(1) based solely on risk of harm to a minor (rather than a harm already suffered), a juvenile court must find the risk of harm exists *at time of the jurisdiction hearing* to take jurisdiction over the minor.” (*In re J.M.* (2019) 40 Cal.App.5th 913, 921.) Here, however, count b-1 of the petition was not based solely on *risk* of harm to B.; it was based on harm that B. had already suffered. Section 300, subdivision (b)(1) applies when “[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 or guardian's . . . substance abuse." (Emphasis added.)

When a child is born with illicit drugs in his body, it "creates a legal presumption that [he] is a person described by Welfare and Institutions Code section 300, subdivision (b)." (*In re Monique T.* (1992) 2 Cal.App.4th 1372, 1378.) Here, B. was born at 34 weeks' gestation after mother's cocaine use caused premature labor. He had cocaine in his system and suffered withdrawal symptoms in the hospital. Even weeks after he was discharged from the hospital, B.'s caregiver reported that B. experienced excessive crying related to ongoing drug withdrawal issues. There is no question that B. "has suffered" serious physical harm as a result of mother's substance abuse.

Mother argues that she was not a current drug abuser, as demonstrated by her negative drug tests and her enrollment in an inpatient drug treatment program. These facts do not negate the serious issues surrounding B.'s birth. "The court may consider past events in deciding whether a child presently needs the court's protection." (*In re N.M.* (2011) 197 Cal.App.4th 159, 165.) Here, mother abused illicit drugs while pregnant with B., obtained no prenatal care, was homeless and unemployed, did not have any identification, and made no effort to prepare for life as a parent before B.'s birth. The court was not required to ignore these facts in determining whether jurisdiction over B. was warranted.

Mother also argues that "[u]se of drugs by a parent, without more," is an insufficient basis for a jurisdictional finding. In support of this contention she cites *In re Drake M.* (2012) 211 Cal.App.4th 754, in which the court found that juvenile court jurisdiction based on father's medical marijuana use was

inappropriate where “[t]here was no evidence showing that Drake was exposed to marijuana, drug paraphernalia or even secondhand marijuana smoke.” (*Id.* at pp. 768-769.) She also cites *In re Rebecca C.* (2014) 228 Cal.App.4th 720, in which the court rejected the argument that physical harm to a child could be *presumed* from a parent’s substance abuse, where there was no evidence of harm or an increased risk of harm. (*Id.* at p. 728.)

This case is not similar to *In re Drake M.* or *In re Rebecca C.* Here, mother exposed B. to months of cocaine and marijuana use as his brain and body were developing in utero, she caused premature labor with her cocaine use, and B. suffered withdrawal symptoms as a result. Use of cocaine during the last months of a pregnancy demonstrates “poor judgment and willingness to endanger [a child’s] safety due to substance abuse.” (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219.) This is not a case involving a parent’s drug use that has minimal effect upon a child—B. was directly and detrimentally affected. The jurisdictional finding was therefore supported by substantial evidence.

Thus, the court’s jurisdictional finding as to count b-1—that B. suffered a detrimental condition from being exposed to cocaine before birth—was supported by sufficient evidence. Mother also focuses on specific language in count b-2, which stated that mother “is a current abuser of cocaine and marijuana,” and asks us to “remand to the juvenile court with instruction to strike this allegation from the section 300 petition.” Mother mistakes the role of this court. We do not manage the language of juvenile dependency petitions by interlineation. Instead, we consider whether substantial evidence supports a jurisdictional finding. Moreover, because substantial evidence

supports jurisdiction over B. under count b-1, we may affirm on that basis without consideration of whether jurisdiction might also be supported under count b-2. “When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*In re I.J.* (2013) 56 Cal.4th 766, 773.) As the court’s jurisdictional finding as to count b-1 is supported by substantial evidence, we affirm the jurisdictional finding.

**C. Disposition order**

Mother also argues that the disposition order was erroneous. This contention is moot. While this appeal was pending, DCFS filed a request for judicial notice of a minute order dated July 17, 2019, in which the juvenile court retained jurisdiction over B., but returned him to mother’s custody. DCFS also moved to dismiss the portion of the appeal addressing the disposition order, asserting that mother “received the relief that she sought in the dispositional portion of her appeal – the return of B.H. to her physical custody,” and therefore any challenge to the disposition order was moot.

Mother opposed the motion for partial dismissal, asserting that it did not make sense to sever the disposition order from the jurisdictional issues: “If the jurisdictional findings are reversed, the removal order has no factual or legal basis or foundation and must also be reversed.” Mother did not address whether her

challenge to the January 16, 2019 disposition order would be moot even if the jurisdictional finding were affirmed. We denied DCFS's partial motion to dismiss, and denied without prejudice DCFS's request for judicial notice. We now grant the request for judicial notice, and take judicial notice of the July 17, 2019 court order. (Evid. Code, §§ 452, subd. (d), 459.)

In her opening brief on appeal, mother challenged the January 16 disposition order removing B. from her home and requiring monitored visitation as “unfounded and an unnecessary invasion of privacy.” She also asserted that the disposition order had “an improperly punitive impact, punishing mother for drug abuse during her pregnancy.” However, the January 16 order is no longer in effect because it was superseded by the July 17 order. Reversing the January 16 order would have no practical effect on the parties. Thus, mother's challenge to the January 16 order is moot. (See, e.g., *In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315 [an appeal is moot where is no effective relief may be afforded]; *In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404 [“We decide on a case-by-case basis whether subsequent events in a juvenile dependency matter make a case moot.”].)



### **DISPOSITION**

The court's January 16, 2019 jurisdictional findings are affirmed. Mother's challenge to the disposition portion of the January 16, 2019 order is dismissed as moot.

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COLLINS, J.

We concur:

WILLHITE, ACTING P.J.

CURREY, J.