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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re E.I., a Person Coming Under the Juvenile Court Law.	B242762
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. I.P. et al., Defendants and Appellants.	(Los Angeles County Super. Ct. No. CK92491)

APPEAL from orders of the Los Angeles County Superior Court. Robert L. Stevenson, Referee. Affirmed.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and Appellant I.P.

Lauren K. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant E.I.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Stephen D. Watson, Senior Associate County Counsel, for Plaintiff and Respondent.

The juvenile dependency court made jurisdictional findings that I.P. (Mother) and E.I. (Father) were abusing narcotics, rendering them incapable of caring for their infant son, E.I. The court entered dispositional orders that included removing E.I. from the family home. Mother and Father appeal. We affirm.

FACTS

Father and Mother are the parents of one child: E.I, born in December 2011. On March 1, 2012, the Los Angeles County Department of Children and Family Services (DCFS) assigned a Case Social Worker (CSW) to respond to an anonymous referral that Father and Mother smoked marijuana in front of E.I., and that Father smoked methamphetamine in front of E.I. At the time of the referral, E.I. was not yet four months old. That same day, CSW conducted an unannounced visit to Father and Mother's home, where they both lived with E.I. When CSW arrived, Father and Mother granted the CSW permission to enter the home. The lock on the entry door to the apartment was broken. Upon entering, she saw that the home was dirty and small; empty water bottles covered the floor and graffiti adorned the walls. A queen size bed took up most of the space in the apartment, while a toddler bed was in the corner of the room.

CSW explained the allegations in the referral to Father and Mother. Both parents denied a history of methamphetamine use, but admitted to using marijuana. Mother stated she used marijuana twice a week with a prescription. She showed CSW a copy of her prescription, which was set to expire on February 3, 2013. Father admitted he smoked marijuana daily, and admitted that he did not have a prescription for the drug. Both Mother and Father told CSW that neither of them smoked in front of E.I.

CSW then interviewed Father. Father had several gang-related tattoos, but denied he was part of any gang. During CSW's interview with Father, he was agitated and spoke rapidly when he answered. Father explained that he was not a drug user and that he was not under the influence of any drugs that day. Father disclosed that both he and Mother were in special education classes and had trouble understanding the questions. Shortly after, Father requested that CSW leave his home. CSW explained that the only goal of the visit was an "Up Front Assessment" to determine the services needed by the

family and ensure the safety and best interest of the child. When CSW requested that Father and Mother sign a safety plan, Father became more agitated and stated that he did not want to be part of the investigation. At that point, Father started to leave the home and blurted out, "I did a line of crystal today!" Father's outburst prompted Mother to tear up and explain that she did not know he used methamphetamine. She admitted to a history of using the substance herself briefly when she was younger.

Following the parents' emotional outpouring, Father left the apartment and talked with the apartment manager, David. Father explained to David that CSW was going to take E.I. from his and Mother's custody. David urged Father to cooperate and Father returned to the apartment. CSW then interviewed David who said he had no concerns about Father and Mother's capacity to care for E.I. nor did he have any suspicion of domestic violence in the home. David indicated that E.I.'s grandmother, A.P., would have more information.

CSW explained to Mother and Father her concern for the family's failure to provide accurate information. As CSW was leaving the family's apartment, Father and Mother grew concerned that DCFS was going to remove the infant from their custody. Father grabbed CSW by the waist and pleaded with her not to leave. Meanwhile, A.P. arrived at the family home. A.P. suggested that Mother leave with E.I. to avoid detention. At 10:30 p.m., Mother put E.I. in a blanket and began to walk out of the apartment with A.P. behind her. The CSW explained that a removal warrant would be issued for E.I. if Mother attempted to flee. Father pleaded with Mother not to leave. Mother returned with E.I. and remained in front of the building, clutching the child and crying that no one was going to take E.I. from her. A.P. finally took the child that evening with instructions that she call DCFS if Father tried to enter her home or if Mother tried to take the child out of A.P.'s home.

CSW made steps to initiate a safety plan to ensure that Father did not care for E.I. while under the influence of drugs. Mother and Father agreed to drug testing the next day in addition to an up-front assessment as part of the safety plan. CSW interviewed A.P. and discovered that Father and Mother previously separated due to fights that

included domestic abuse, but reunited and had been together for the preceding four months. A.P. also disclosed her concerns about Mother and Father's relationship. She told CSW she believed that Father was addicted to drugs and physically abused Mother. When CSW asked A.P. if Father or Mother abused E.I., A.P. said that they did not. When CSW asked Mother about any prior referrals to DCFS, Mother denied any prior involvement with DCFS, but then admitted there had been some previous contacts. A.P. told CSW that she (A.P.) did not have any prior involvement with DCFS.

On March 2, 2012, Mother submitted to a drug test; she tested positive for cannabinoids. She also tested positive on March 7, April 13, and four other times leading up to April 20. Mother failed to appear for tests on April 4, and April 16.

On March 5, 2012, CSW spoke with Father's parole officer. The parole officer indicated that Father was an active 18th Street gang member with a history of drug use. Father's parole officer reviewed parole records for Mother and informed CSW that Mother's parole file showed she had tested positive for methamphetamines in 2010.

In a follow-up interview on March 6, 2012, Mother admitted to having a mental illness diagnosis, and to attempting suicide when she was in a juvenile detention camp when she was younger. Mother stated that, while detained, she was caught smoking marijuana and avoided being charged by pretending to be suicidal. Mother likewise admitted she was behind on rent due to the expense of food and diapers for E.I., but had an arrangement with the building manager to catch up on her payments.

CSW spoke to Mother's parole officer, who expressed his concern for the child due to Father's gang activity and general lifestyle. Also, the parole officer stated that Mother frequently was removed from apartments for failure to pay rent. He felt that Mother's family was reluctant to take care of her. The parole officer stated his opinion that Mother was unstable and unreliable, and expressed concern regarding her parenting ability.

On March 6, 2012, a judge issued a removal warrant authorizing DCFS to take E.I. from the care of Father and Mother. When CSW arrived at A.P.'s residence, E.I. was not there. A.P.'s roommate informed CSW that E.I. was at A.P.'s workplace. However,

when CSW arrived at the workplace, the child was not there. A.P. informed CSW that E.I. was with Mother's sister. CSW took custody of E.I. from Mother's sister's home without incident.

On March 9, 2012, DCFS filed a juvenile dependency petition on behalf of E.I. (Welf. & Inst. Code, § 300.)[1] Pursuant to section 300, subdivision (b), the petition alleged:

"[Father] has a history of substance abuse and is a current user of methamphetamine and marijuana which renders [him] incapable of providing regular care for the child. On 3/1/12, the father was under the influence of methamphetamine, while the child was in the father's care and supervision. The father's substance abuse endangers the child's physical health and safety and creates a detrimental home environment, placing the child at risk of physical harm and damage."

"[Mother] has a history of substance abuse including, methamphetamine and is a current abuser of marijuana which renders the child's mother incapable of providing regular care for the child. On 3/2/12, the mother had a positive toxicology screen for marijuana. The mother's substance abuse endangers the child's physical health and safety and creates a detrimental home environment, placing the child at risk of physical harm and damage."

The dependency court detained E.I. and ordered monitored visits for each of the parents. The court ordered drug tests for each parent and a prerelease investigation report as to the Mother.

On April 23, 2012, DCFS filed a jurisdiction/disposition report. The report indicated no prior child welfare history, but showed a criminal history for both Mother and Father. Mother suffered a series of convictions beginning in 2003. They included failure to appear, vandalism, battery, carjacking, robbery and petty theft. She spent two years in prison for the robbery. Father's offenses began in 1998 and include possession

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[1] All further section references are to the Welfare and Institutions Code.

of cocaine, carjacking, battery with serious bodily injury, trespass, and violations of a gang injunction. Father served three years in prison for the carjacking.

Mother stated in the report that she had discontinued smoking while pregnant and breast feeding, however returned to using marijuana to treat her headaches when Tylenol was not working. Father claimed in the report that DCFS was called on March 1, 2012, as a revenge scheme by his former girlfriend. He stated that Mother and the reporting caller recently had an argument on Facebook that resulted in the report to DCFS. The report also showed that E.I. was healthy and that visitations with Mother were occurring regularly. The parents reported no current drug abuse, but Mother's drug tests showed the presence of tetrahydrocannabinol (THC). The parents showed a willingness to work with the court for reunification.

In the beginning of April 2012, Mother reportedly separated from Father after an argument about his refusal to turn down very loud music which devolved into a shoving match between the two. Five days later, Mother reconciled with Father. She promised that the two of them would enroll in programs for reunification. Five days after that, Mother and Father were evicted from their apartment. On April 27, Father was incarcerated for not reporting to his parole officer. On May 3, Mother moved out again, and provided DCFS with a new address where she was not living with Father. Shortly thereafter, Mother voluntarily enrolled in a substance abuse program at Homeboy Industries.

At the jurisdiction hearing on May 21, 2012, the court sustained the allegations in the petition, and found E.I. to be a person described under section 300, subdivision (b). The court ordered that Mother's THC levels go down and ordered that E.I. be placed in A.P.'s home. The court granted DCFS discretion to allow Mother to live in A.P.'s home.

In making its findings, the court explained: "I have a four-month-old child here. Mother's marijuana use, I think, is extremely high to be taking care of a four-month-old child. If she is caring for the child, whether or not she smokes in front of the child or not, she is impaired at that level and that puts the child at risk."

In July 2012, DCFS reported that Mother had tested positive for cannabinoids on every occasion she was tested between March 2 and June 15, 2012. She also failed to appear four times during the same period. Likewise, Father tested positive for cannabinoids on every occasion he tested between March 5 and April 30, 2012, and failed to appear several times.

At the disposition hearing on July 2, 2012, the juvenile court ordered E.I. removed from the family home, and placed in the custody of DCFS for suitable placement. The court ordered both Mother and Father be subject to drug and alcohol testing and that they attend Alcoholics or Narcotics Anonymous meetings and participate in parenting classes. The court ordered monitored visitation rights for the parents, with DCFS having discretion to liberalize visitation.

Mother and Father filed a timely notice of appeal.

DISCUSSION

Mother's Appeal

I. Mootness

As an initial matter, DCFS contends that review of Mother's appeal is moot in that E.I. will remain a dependent of the juvenile court due to the jurisdictional findings as to Father. Mother contends that review is appropriate because upholding an unsupported finding may have implications for her as the dependency case proceeds. We find that review of Mother's contentions is appropriate because the jurisdictional orders serve as the basis for dispositional orders and may be prejudicial in the current or future dependency proceedings. (See *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763 (*Drake M*.).)

We agree with DCFS that "a jurisdictional finding good against one parent is good against both" (see *In re Alysha S.* (1996) 51 Cal.App.4th 393, 397), and that, once a child is within the jurisdiction of the dependency court, the court may fashion its dispositional orders as to each parent, according to the circumstances of each case. Under such a rule, a "non-offending parent," may still be subject to dispositional ordered as appropriate to the circumstances of the case. Thus, ordinarily Mother's jurisdictional challenge would

serve little purpose if there is evidence — which there is — to support the dependency court's jurisdiction based on Father's behavior. However, where findings could affect further orders in the dependency proceeding, or where findings may adversely affect a parent without affecting the best interest of a dependent child, the court may address the challenges of one parent. (*In re Anthony G.* (2011) 194 Cal.App.4th 1060, 1065.) We are satisfied that this is such a case justifying appellate review.

II. Jurisdiction

Mother argues there was no substantial evidence to support the assertion of jurisdiction over E.I. We disagree.

" 'We review the juvenile court's jurisdictional findings for sufficiency of the evidence. [Citations.] We 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. [Citation.]' [Citation.] ' " 'The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.' [Citation.]" [Citation.]' [Citation.]" (*In re V.M.* (2010) 191 Cal.App.4th 245, 252.)

Under section 300, subdivision (b), the juvenile court may assert jurisdiction over a child 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 failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . 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. . . . The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness."

Thus, "[t]he three elements for jurisdiction under section 300, subdivision (b) are: ' "(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and

(3) 'serious physical harm or illness' to the [child], or a 'substantial risk' of such harm or illness." ' [Citations.]" (*In re B.T.* (2011) 193 Cal.App.4th 685, 692.)

There was substantial evidence that Mother's substance abuse placed E.I. at substantial risk of serious physical harm or illness. There is not a real question here that Mother is a substance abuser. Indeed, Mother recognized her own substance abuse problem by voluntarily enrolling in classes to address the issue. Further, she admits smoking marijuana illegally prior to obtaining a prescription. Mother indicated she continued to smoke marijuana while responsible for care of her then four-month-old infant. Further, even though the court warned Mother that she had to decrease the levels of her THC intake, she continued to use the drug and to test positive for marijuana use.

There is also evidence the substance abuse placed E.I. at risk of serious physical harm or illness. Mother admits she smoked marijuana on the balcony adjacent to her small apartment while she was providing care for E.I. Mother and Father had a contentious relationship, marked by fighting and domestic abuse. Mother was unable to provide a stable home for the infant, as she was consistently moving from her apartments either for a failure to pay rent, or to temporarily separate from Father. As the court stated, "I have a four-month-old child here. Mother's marijuana use, I think, is extremely high to be taking care of a four-month-old child. If she is caring for the child, whether or not she smokes in front of the child or not, she is impaired at that level and that puts the child at risk."

In re Alexis E. (2009) 171 Cal.App.4th 438, is illustrative. In *Alexis E.*, the father appealed from a finding that he was a substance abuser and his conduct placed his children at a substantial risk of harm. (*Id.* at p. 440.) The father legally smoked marijuana and admittedly watched over the children under the influence of drugs. (*Id.* at p. 442.) While the court in *Alexis E.* held that "use of medical marijuana, *without more*, cannot support a jurisdiction finding," there was substantial evidence to show the "more" necessary to support the jurisdiction finding. (*Id.* at p. 453.) There, father admitted using marijuana illegally prior to a psychologist prescribing him marijuana. Father used marijuana while his children were home, which constituted a risk of harm to the minors

from the marijuana smoke. Further, father's use of marijuana caused his mood to decline as demonstrated by irritability, lack of patience, yelling, and violence after smoking the drug. (*Ibid.*) These facts lead the court to affirm the dependency court's findings. Mother contends that *Alexis E.* is distinguishable. We disagree. In this case, as in *Alexis E.*, we have pointed out that there is requisite "more" evidence to support the jurisdictional finding.

Mother argues the recent case of *Drake M., supra*, 211 Cal.App.4th 754, supports her contentions. In *Drake M.*, the dependency court found jurisdiction over a child whose father smoked legal marijuana. The Court of Appeal addressed the issue of whether habitually smoking legal marijuana constituted conduct that rendered a father incapable of providing regular care and supervision to a child. (*Ibid.*) The court found that such conduct could fall within the purview of section 300, subdivision (b), if a child has suffered or was at substantial risk for suffering serious physical harm or illness as a result of: (1) a parent's inability to provide regular care due to substance abuse or (2) the parent's failure to adequately supervise or protect the child. (*Drake M., supra*, at p. 763.)

The *Drake M.* court followed an early case and held that a finding of substance abuse must be based on "evidence sufficient to: (1) show that the parent or guardian at issue had been diagnosed as having a current substance abuse problem by a medical professional or (2) establish that the parent or guardian at issue has a current substance abuse problem as defined in the [American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders]." (*Drake M., supra*, 211 Cal.App.4th at p. 766.) As to children of "tender years," the court stated "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." (*Id.* at p. 767.)

The Court of Appeal in *Drake M.* determined that DCFS had failed to prove the father was a substance abuser in the absence of evidence from a medical professional because there was no evidence that the father suffered from any recurrent substance abuse problems. (*Drake M., supra*, 211 Cal.App.4th at pp. 766-767.) The father had a legal, medical recommendation to use marijuana for recurring knee pain and could

adequately care for the child. (*Id*. at p. 767.) The child had food, water, and shelter; there was no evidence of abuse in the home; and no evidence showed that the child was not supervised. (*Ibid*.) Thus, the Court of Appeal overturned the dependency court's findings.

We find *Drake M.* distinguishable. As we have pointed out, there is substantial evidence to show that Mother is a substance abuser and it is affecting her ability to care for an infant child. Even under *Drake M*., this is sufficient to prove that Mother is unable to provide care for E.I., clearly a child of "tender years," rendering the infant at substantial risk of physical harm. Also unlike *Drake M*., Mother here illegally used drugs in the past and though she now has a prescription for medicinal marijuana, she uses it in markedly high amounts. She is unable to maintain a consistent home for her child, and there is domestic abuse in her homes. Thus, we affirm the dependency court's findings.

Father's Appeal

Father's opening brief on appeal joins in Mother's opening brief on appeal. However, he has not presented any independent argument based upon the evidence of his actions leading to DCFS's involvement with the family. We construe Father's opening brief to contend that the dependency court's finding of jurisdiction over E.I. is not supported by substantial evidence because of his own actions. Under the substantial evidence standard of review discussed above in addressing Mother's appeal, we disagree. (See *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) The evidence concerning Father is, of course, different from the evidence concerning Mother. The evidence shows Father current use of illegal narcotics, including methamphetamine. This is sufficient to sustain the dependency court's finding of jurisdiction. (*Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322.)

DISPOSITION

The dependency court's orders are affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

FLIER, J.