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

In re HAYDEN W., a Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

WILLIAM W.,

Defendant and Appellant.

B278766

(Los Angeles County
Super. Ct. No. DK13789)

APPEAL from an order of the Superior Court of
Los Angeles County, Julie F. Blackshaw, Judge. Reversed and
remanded with directions.

Janette Freeman Cochran, under appointment by the Court
of Appeal, for Defendant and Appellant.

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

INTRODUCTION

William W., the father of seven-year-old Hayden, appeals from the juvenile court's order at the six-month hearing under Welfare and Institutions Code section 364¹ continuing dependency jurisdiction over Hayden. Instead of terminating jurisdiction, the juvenile court continued jurisdiction because it found Hayden was not "thriving" emotionally. That finding, however, even if supported by substantial evidence, was not enough. To continue jurisdiction based on emotional harm, the court had to find under sections 300, subdivision (c), and 364, subdivision (c), that Hayden was "suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others." The court did not make this finding, nor was there substantial evidence to support such a finding. Therefore, we reverse and remand to conduct a new hearing under section 364 in light of the current circumstances of Hayden and her family.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Referrals*

Hayden was born in 2009. In August 2014 Hayden's mother, E.L., reported that Hayden was living with William because of E.'s drug addiction and because E. had been hospitalized after taking "a lot of pills." In January 2015 the

¹ Statutory references are to the Welfare and Institutions Code.

family court issued a custody order giving William and E. joint legal custody, William physical custody, and E. weekend visitation. The custody order also prohibited E. and William from “mak[ing] derogatory remarks about the other in the presence or within hearing of [Hayden].” In 2015 E. had another child, A., who is Hayden’s half-brother.

On October 1, 2015 the Los Angeles County Department of Children and Family Services received a referral relating to A. E. had contacted the Los Angeles Police Department and reported she was the victim of domestic violence by A.’s father, Vincent C. The police responded to the home and arrested Vincent. According to both E. and Vincent, A. was at home during the altercation.

While the Department was investigating the October 1 referral, it received another referral. On October 5, 2015 E. was intoxicated and went to an emergency room seeking treatment for her alcohol problems, apparently for the second time. E. “could not remember a lot of things and it was suspected that she was blacking out due to her drinking.” The treating physicians discharged her with medication to assist with alcohol withdrawal. During her emergency room visit, E. admitted she had lied to law enforcement about the domestic violence incident with Vincent and it was she who was physically aggressive towards Vincent in A.’s presence. Two days later, the police stopped E. while she was driving drunk with A. in the car. The police did not arrest E. or issue her a citation, but they called Vincent and told him about the incident. Vincent and E.’s sister took E. to the hospital, where she “was placed on a psychiatric hold.”

Two days after E. was admitted to the hospital, a social worker spoke with William. William stated he had full physical

custody of Hayden, and E. did not consistently visit with Hayden. According to William, “for about 3 months [E. did not have] any contact with [Hayden] because she was homeless,” but E. “had a visit with [Hayden] the second week of September 2015 after she rented her current apartment.” William said he had seen E. “getting aggressive while drunk and this is why he would do everything to make sure that [Hayden] is safe.” He told the social worker “his goal [was] to get sole custody.”

B. The Petition and Detention Hearing

On October 14, 2015 the Department filed a petition under section 300 alleging the history of violent altercations between E. and Vincent endangered the physical health and safety of A. and Hayden, under section 300, subdivisions (a) and (b), and endangered Hayden under section 300, subdivision (j); E.’s “mental and emotional problems” and “history of illicit drug use . . . and alcohol” put both A. and Hayden “at risk of serious physical harm” under section 300, subdivision (b); and E.’s driving “under the influence of substances without a driver’s license, while the child, [A.], was a passenger in the vehicle,” endangered A. and Hayden under section 300, subdivision (b), and endangered Hayden under section 300, subdivision (j). At the detention hearing the same day, the court found a prima facie case for detaining A. and Hayden and that “continuance in the home is contrary to the child[ren]’s welfare.” The court noted its “findings are made as to the mother,” and released Hayden to William and A. to Vincent.

C. *The Amended Petition and the Jurisdiction and Disposition Hearing*

On December 17, 2015 the Department filed an amended petition with an additional allegation under section 300, subdivision (b), that William has “a history of substance abuse and is a current user of marijuana,” he “has a criminal history of convictions of drug-related offenses,” and “[o]n prior occasions” he “possessed, used, and was under the influence of marijuana” while Hayden was in his “care and supervision.” The Department alleged William’s “substance abuse problems render [him] incapable of providing regular care of [Hayden]” and his “use of illicit drugs endangers [Hayden’s] physical and emotional health and safety.”

On January 4, 2016 the Department filed its jurisdiction/disposition report. E. admitted “she has struggled with alcohol,” “has used marijuana in the past,” and “is currently residing in a sober living program.” Between 2013 and the end of 2015 she was treated for alcohol abuse, anxiety, and depression. She could not “recall the physical altercation between her and [Vincent], all that she knows was when she woke up the next morning she had bruises on her arms and her jaw was hurting. [Vincent] was apologizing . . . for ‘putting his hands on me and saying I hate when you drink.’” According to the police report, E. “advised she was in fear for her life from [Vincent’s] threats to kill her and their child.”

E. told the dependency investigator that “when she was with William he used cocaine and alcohol and she is concerned he may still be using drugs.” She also said that William was “bad mouthing” her to Hayden and that “these types of comments being made to Hayden that her mother is a liar are not conducive

to Hayden's well being." William told the dependency investigator he used to abuse alcohol and marijuana, but no longer does. He agreed to take a drug test, which revealed "low" levels of marijuana. When the social worker told William the results of the test, he said he was "surprised," but explained "he has a medical marijuana recommendation to use and he has been using edibles to address arthritis and sleeping issues." William "provided the department with a copy of his medical marijuana letter." He said he uses marijuana "not even once a month, only as needed," and he had not used marijuana in a month. According to the Department, "[t]he substance abuse allegation in the amended petition was based on [William] having past criminal convictions for drug-related offenses, [E.] claiming [William] used cocaine and alcohol during their relationship, and [William] admitting he abused alcohol and marijuana in the past while also testing positive for marijuana earlier that month."

E. felt "Hayden should be in therapy to assess how she is doing with all that is going on." William told the dependency investigator that the family court had ordered him "to have Hayden assessed for therapy services" and that he "took her to have her evaluation from Kaiser." Hayden was diagnosed with "adjustment disorder," but the therapist "reported Hayden no longer needed therapeutic services." The dependency investigator confirmed with the therapist the accuracy of William's statements. Hayden was "doing well in school" and "received 'Perfect Attendance' awards from her school." Hayden told the dependency investigator "she loves both her mom and dad" and "her parents are nice to each other and they don't say anything bad to her about one another." She said she likes Vincent and he has never been mean to her. When the

dependency investigator “asked if Hayden has ever seen Vincent be mean to her mom, [Hayden] responded ‘I don’t know about that.’”

The jurisdiction/disposition report concluded that “[c]ontinued detention of the children from the mother is necessary in order to ensure their safety and well being.” The Department recommended enhancement services (treatment programs and counseling) for E. “for the purpose of regaining custody” and family maintenance services (random drug testing) for William “for the purpose of later retaining custody without court supervision.”²

On January 11, 2016 the court held a jurisdiction and disposition hearing.³ Neither William nor E. contested jurisdiction. The court amended by interlineation certain counts

² “Enhancement services are child welfare services offered to the parent not retaining custody, designed to enhance the child’s relationship with that parent.” (*Earl L. v. Superior Court* (2011) 199 Cal.App.4th 1490, 1497, fn. 1; see *In re A.L.* (2010) 188 Cal.App.4th 138, 142, fn. 2 [although “there is . . . no statutory definition of ‘enhancement’ services,” they appear to be “services designed to benefit the relationship between the child and non-custodial parent in a case where the child remains in the custody of the other parent”].) “[F]amily maintenance services are activities designed to provide in-home protective services to prevent or remedy neglect, abuse, or exploitation, for the purposes of preventing separation of children from their families.” (§ 16501, subd. (g); see *In re Armando L.* (2016) 1 Cal.App.5th 606, 615.)

³ The record contains the minute order entered after the jurisdiction/disposition hearing, but not the transcript of the hearing.

of the petition, sustained those counts as amended, dismissed the remaining counts, and declared Hayden a dependent of the court under section 300, subdivisions (b) and (j). The sustained counts related only to Vincent's "physical altercations" with E., E.'s "mental and emotional conditions," and E.'s alcohol abuse and use of marijuana. The court did not sustain the count relating to William's alleged substance abuse. The court placed Hayden with William and ordered two-hour, unmonitored visits with E. at her alcohol treatment program and monitored visitation outside of the treatment program. The case plan for E. included mental health counseling, a full alcohol program with aftercare, a 12-Step Program, a victim support group, and drug/alcohol testing. William's case plan consisted only of six drug tests and a full drug treatment program if any test was "missed or dirty."

D. *The Six-month Review Hearing*

On October 17, 2016 the court held a contested six-month review hearing under section 364. In its July 11, 2016 report prepared for the hearing,⁴ the Department assessed Hayden's "current family circumstances" as follows: "Hayden . . . has been consistent with school attendance and her grades are currently above average. Hayden has not disclosed any type of abuse or neglect by either parent. Hayden obtained a roll [*sic*] in a movie. [The social worker] has observed Hayden in the home of [William] and she appears to be comfortable in the home as evident by interacting with [William] positively when he redirects

⁴ The court had originally scheduled the six-month review hearing for July 11, 2016, but when counsel for William "request[ed] that [the] case be closed," the court "set it for a contest on October 17th."

her, stating that she feels safe and telling [the social worker] that she loves her father. Monitor [E.'s sister] reports that Hayden appears happy and comfortable with [E.] during their weekend visits. Hayden has stated that she enjoys the weekend activities with her mother, maternal aunt and cousins." In its evaluation, the Department assessed Hayden as "a 6 year old female who appears to be developing age appropriately. Hayden is performing above grade level at this time and has stated that she enjoys school. Hayden is creative and energetic and enjoys spending time with her father, mother and sibling [A.]."

According to the Department, E. had been "compliant with all Court ordered services." And William had been "compliant with ensuring visitation between [E. and Hayden] occur on a regular basis." The Department described William as "a non-offending parent [who] has not been ordered by [the] Court to participate in any additional services." The Department noted that both E. and William "expressed concerns regarding one another and how their personalities, past history and current parenting styles may be affecting Hayden. Hayden has expressed that she loves both of her parents and wants to spend time with both of them as well as her sibling [A.]." Despite the Department's evaluation of Hayden as creative, energetic, and developing age-appropriately, the Department concluded that "[a]t this time it appears that [E. and William] are unable to co-parent effectively . . . due to their adversarial feelings toward one another."

On October 17, 2016 the Department filed a last-minute information for the court. E.'s sister, the monitor for E.'s visits with Hayden, told the Department that, during one of Hayden's visits, E. had to blow into her car's ignition interlock system in

order to “continue to drive.” “Hayden proceeded to say ‘my dad told me that you have to blow in that in case you drink, then the car won’t start.’” “[E.] said, your dad told you that and she said ‘yes’ and [E.] said ‘well mommy doesn’t drink, so you don’t have to worry about that.’ Then Hayden said ‘my dad also said that the only reason you are fighting for me is because the courts will do something to you, if you don’t fight for me.’ And [E.] said, ‘why do YOU think I’m fighting for you?’ And Hayden said ‘because you love me but my dad is trying to make it seem as if you don’t love me and you are only going to court because they are making you but I know you love me’ and [E.] said ‘that’s right I do love you.’ Then Hayden said ‘my dad said you lied a lot and was always drama, drama, drama’ and [E.] said ‘Hayden this is not true and I’m sorry that he told you this.’” E’s sister told the social worker that two weeks later E. “relapsed and was admitted to the hospital.” E. was to “remain in in-patient care for the next two weeks” and “then begin out-patient treatment.”

The social worker met with Hayden the following week. “When [the social worker] inquired about whether or not she had a conversation with [her] mother indicating that [her] father . . . had spoken negatively about [her] mother in her presence Hayden became visibly upset. Hayden started to tear up and asked if she could go to the restroom. When Hayden returned she told [the social worker] that she does not like being in the middle of her parents and loves both parents yet doesn’t want to keep secrets from her mom. Hayden confirmed that [her] father . . . told her that [her] mother is only trying to get better because [the] Court is involved. Hayden was worried about getting in trouble and asked [the social worker] not to talk to [her] father . . . about what she was telling [the social worker].”

At the six-month review hearing, the court admitted the Department's July 11, 2016 status report, in which the Department recommended continuing jurisdiction.⁵ Counsel for William asked "that [the] case be closed as Hayden [was] safely in his care, and she[was] thriving under his care . . . since the beginning of [the] case." Counsel for William argued, "The concern regarding co-parenting is not a basis for jurisdiction." Counsel for Hayden and counsel for E. urged the court to continue jurisdiction. Counsel for Hayden argued, "While I do think [William] has kept [Hayden] safe and she is thriving, I do think . . . something is being said to [Hayden] that's upsetting to her. . . . She knows too much about the case and the circumstances with [E.] for a child her age. Given she's spending most of her time with [William], I think the logical conclusion is that it's coming from [him]. . . . She indicated that her dad is trying to make it seem as if her mother doesn't love her. And her dad also said that her mother lied a lot, and there was a lot of drama. . . . Parental alienation is in many respects emotional abuse. . . . I'm not exactly sure that's what's happen[ing]. But what is clear is Hayden is hearing information which I think is coming from [William]. It's upsetting her. She knows too much, and I think for those reasons we need to keep jurisdiction." Counsel for E. argued, "This has been a traumatic time for [Hayden]. I don't think she's worked through it. I think that's a basis for the court to maintain jurisdiction, and I'll submit."

The court ruled, "I'm going to keep jurisdiction in this case. I actually don't think from the information in front of me that

⁵ Counsel for the Department did not make any argument at the hearing.

Hayden is thriving. . . . I think she's doing very well in school, but emotionally she is not thriving." The court explained to William that "disparag[ing]" Hayden's mother "made [Hayden] cry" and that "that is not the best care that you can give to her." The court ruled, "I'll keep jurisdiction in this case. The court . . . finds by a preponderance [of the evidence] that continued jurisdiction is necessary because conditions continue to exist which justified the court taking jurisdiction under . . . section 300. Conditions which would [have] justified the initial assumption of [supervision] under section 300 are likely to exist if supervision is withdrawn." The court "admonished [William] not to make any disparaging remarks about [E.] to Hayden."

William filed a timely notice of appeal. His sole argument is that "[t]he court had no evidence to support its order continuing jurisdiction."

DISCUSSION

"After the juvenile court finds a child is a person described in section 300, it must 'hear evidence on the question of the proper disposition to be made of the child.'" (*In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1154, citing § 358, subd. (a).) "In appropriate circumstances, the court may declare the child a dependent, and 'without removing the child from his or her home, order family maintenance services to ameliorate the conditions that made the child subject to the court's jurisdiction.' [Citation.] Once a child has been declared a dependent, the juvenile court must review the status of the child every six months. [Citations.] 'The applicable standards at the six-month review hearing differ depending on the child's placement.' [Citation.] Section 364

provides the standard when ‘a child under the supervision of the juvenile court . . . is not removed from the physical custody of his or her parent or guardian.’” (*Id.* at p. 1154, fns. omitted.)

Section 364, subdivision (c), provides: “After hearing any evidence presented by the social worker, the parent, the guardian, or the child, the court shall determine whether continued supervision is necessary. The court shall terminate its jurisdiction unless the social worker or his or her department establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn.”⁶ (See *In re J.F.* (2014) 228 Cal.App.4th 202, 209-210.) “Although the decision whether to terminate is considered discretionary [citation], use of the word ‘shall’ denotes a mandatory act.” (*In re D.B.* (2015) 239 Cal.App.4th 1073, 1085; see *In re Armando L.* (2016) 1 Cal.App.5th 606, 615 [“[s]ection 364, subdivision (c) establishes a

⁶ Courts are divided on whether the conditions that would justify continued jurisdiction under section 364 must be the same conditions that “exist[ed] at the time of initial assumption of jurisdiction.” (*In re D.B.* (2015) 239 Cal.App.4th 1073, 1085; compare *In re J.F.* (2014) 228 Cal.App.4th 202, 210 [“[t]he language of section 364 does not literally require that the precise conditions for assuming jurisdiction under section 300 in the first place still exist—rather that conditions exist that ‘would justify initial assumption of jurisdiction’”] with *In re Janee W.* (2006) 140 Cal.App.4th 1444, 1451 [to continue jurisdiction, section 364 requires “the conditions that justified taking jurisdiction in the first place still exist”].) Like the court in *D.B.*, “[w]e do not resolve the issue because the juvenile court should have terminated dependency jurisdiction under either interpretation.” (*D.B.*, at p. 1085.)

statutory presumption in favor of terminating jurisdiction and returning the child to the parents' care without further court supervision"]; *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 304 ["[t]ermination of dependency jurisdiction is required unless the Department establishes the conditions still exist that would justify the court taking jurisdiction of the child or such conditions would exist if jurisdiction were terminated"].)

"At the section 364 review hearing, the juvenile court is not concerned with reunification, but in determining whether the dependency should be terminated or supervision is necessary. [Citations.] The juvenile court makes this determination based on the totality of the evidence before it, including reports of the social worker who is required to make a recommendation concerning the necessity of continued supervision." (*Armando L., supra*, 1 Cal.App.5th at p. 615.) "[W]hen the social services agency opposes termination of dependency jurisdiction, it clearly bears the burden of proof to show the existence of the conditions section 364(c) specifies must be proven to support retention of dependency jurisdiction." (*Aurora P., supra*, 241 Cal.App.4th at p. 1146.)

"Findings under section 364 are reviewed for substantial evidence." (*D.B., supra*, 239 Cal.App.4th at p. 1086.) "Under the substantial evidence standard of review, the appellate court does not reweigh the evidence, evaluate the credibility of witnesses, or draw inferences contrary to the findings of the trial court." (*J.F., supra*, 228 Cal.App.4th at p. 209.) "For evidence to be sufficient to support a trial court's finding, it must be reasonable, credible, and of solid value." (*Ibid.*)

Substantial evidence under section 364 can be evidence that "[t]he child is suffering serious emotional damage, or is at

substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care.” (§ 300, subd. (c); see § 364, subd. (c).) Thus, for the court to continue jurisdiction based on emotional damage, there must have been substantial evidence of the following: “(1) serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior or a substantial risk of severe emotional harm if jurisdiction is not assumed; (2) offending parental conduct; and (3) causation.” (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1379; see, e.g., *In re Roxanne B.* (2015) 234 Cal.App.4th 916, 921 [child suffered “serious emotional damage in the form of major depressive disorder [and] suicidal ideations”]; *In re Shelley J.* (1998) 68 Cal.App.4th 322, 330 [child’s “chronic running away” and “acting out” due to “deplorable” home conditions was substantial evidence that the child “came within the provision of section 300, subdivision (c)”]; *In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1321 [13-year-old child whose mother had delusions that his penis had been mutilated, who “suffered the indignity and embarrassment” of a medically unnecessary urology examination, and who “neglected his own emotional needs because of his fear of aggravating his mother’s condition” was at “a substantial risk he could suffer serious emotional damage” where there was “a distinct possibility” that his mother’s condition might deteriorate].)

The Department argues it met its burden to prove all three elements because William, by “repeatedly making disparaging comments about [E.] directly to Hayden,” caused Hayden “to feel

severely anxious and depressed.” There is no evidence, however, that Hayden was severely anxious and depressed, or that she manifested anything other than sadness—a normal reaction to her parents’ contentious divorce. (See *Brisson C.*, *supra*, 81 Cal.App.4th at p. 1382 [“if parents’ poor communications skills and distrust established a need for [juvenile court intervention, it] could assume or continue jurisdiction in virtually every family law case involving custody or visitation issues”]; *In re Alexander K.* (1993) 14 Cal.App.4th 549, 559 [section 300, subdivision (c), is “quite specific regarding the type of impairment to the child’s emotional functioning which will support intervention”]; see also *Villarreal v. Villarreal* (Tex. App. 1984) 684 S.W.2d 214, 219 [“[w]hile appellee testified that the children seemed upset by the relationship between herself and appellant, there was no real evidence that anything more than the emotional stress upon children which normally arises from [an acrimonious] divorce[] was being experienced by these children”].)

The case having facts most analogous to this case is *D.B.*, *supra*, 239 Cal.App.4th 1073. In that case, the 10-year-old dependent child told her social worker “that she does not want to hurt either of her parents and does not understand why they have to [be] mean to each other.” (*Id.* at p. 1080.) The child reported that, during visits with her father, he would “talk negatively or say that he’s going to have something done, like have the cops called on mother, or just words being exchanged that [the social worker did not] think a child should be put in the middle of.” (*Id.* at p. 1082.) The juvenile court continued jurisdiction under section 364, subdivision (c), finding “the conditions justifying initial assumption of jurisdiction under section 300 still existed.” (*Id.* at pp. 1085-1086.) The Court of

Appeal reversed, concluding “[s]ubstantial evidence did not support the juvenile court’s finding” and “Father did nothing during [his visits with the child] that would justify assumption of dependency jurisdiction.” (*Id.* at p. 1086.)

Brison C., *supra*, 81 Cal.App.4th 1373, is to the same effect. In that case a nine-year-old child was “the focus of an extended battle between his parents.” (*Id.* at p. 1375.) At the time of the combined jurisdiction and disposition hearing, however, he was “physically healthy,” “performing at or above grade level at school,” “did not exhibit behavioral abnormalities or difficulties,” and was “happy to see” and “affectionate toward” his mother. (*Id.* at p. 1380.) But he also reported having nightmares and evidenced a “deep dislike and fear of his father.” (*Ibid.*) The court concluded the evidence was not sufficient to support juvenile court jurisdiction, stating “the record does not contain substantial evidence showing that [the child] is seriously emotionally damaged or that he is in danger of becoming so unless jurisdiction [was] assumed.” (*Id.* at p. 1379.) The court explained that “[o]ccasional nightmares are not per se abnormal” and that the child’s “antipathy [toward his father] may simply reflect an honest appraisal of his father’s character and a self-protective and healthy desire to avoid his company.” (*Id.* at p. 1380.) The court noted that “[n]o psychological testimony was presented” at the hearing and that “earlier psychological evaluations” were not probative of the child’s emotional health because they were “years out of date.” (*Ibid.*)

Similar to the children in *D.B.* and *Brison C.*, Hayden’s expressions of sadness and her desire to avoid being in the middle of her parents’ conflict are normal responses to divorce that do not, without more, reflect severe anxiety or depression.

And, as in *Brison C.*, there was no psychological evidence that would have supported juvenile court jurisdiction based on emotional damage. In fact, the only psychological evidence was that Hayden's therapist believed Hayden did not need therapy.

The Department argues *Brison C.* is distinguishable because in that case the "parents recognized the inappropriateness of commenting to the child about the other parent and expressed a willingness to change their behavior and attend counseling and parenting classes." The Department asserts that, because William has not recognized the inappropriateness of his comments or expressed a willingness to change, he is likely to continue making inappropriate comments, which evidences a "risk of continuing harm to Hayden's emotional well-being." The flaw in this reasoning is that William's inappropriate comments did not cause Hayden the serious emotional damage required for juvenile court jurisdiction. And even if William continued to make those kinds of comments, there is no evidence that they would likely do in the future what they have not done in the past—cause Hayden "serious emotional damage [as] evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior." (§ 300, subd. (c).)

Making disparaging remarks about a child's other parent may not be good parenting or, in the juvenile court's words, "the best care" a parent can give. And it may make the child cry. But it does not, without more, justify juvenile court jurisdiction. Substantial evidence does not support the court's finding at the six-month review hearing that continued jurisdiction in this case was necessary.

Meanwhile, since William filed his notice of appeal, the case in the juvenile court has proceeded. On April 17, 2017 the

court held a review hearing under section 364, and on July 17, 2017 the court held a progress hearing. At the April 17, 2017 hearing the court terminated its “home of parent, father” order and entered a “home of parent(s)” order. At the July 17, 2017 hearing the court modified the “home of parent(s)” order by releasing Hayden to her mother pending the next hearing. The court also issued a temporary restraining order against William, protecting “mother and children,” and admonished William “not to coach minor regarding any issues of this case.” Therefore, on remand, the juvenile court is to conduct a new hearing under section 364 considering the family’s current situation.

DISPOSITION

The juvenile court’s order continuing jurisdiction is reversed. The matter is remanded with directions to conduct a new hearing under section 364 to determine whether termination of jurisdiction is appropriate in light of Hayden’s current circumstances and, if it is, to make any appropriate exit orders.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.