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

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

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

JOHN M. et al.,

Defendants and Appellants.

B278528

(Los Angeles County
Super. Ct. No. CK82041)

APPEALS from an order of the Superior Court of Los Angeles County, Philip Soto, Judge. Affirmed in part and reversed in part with directions.

Jesse McGowan, under appointment by the Court of Appeal, for Defendant and Appellant John M.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant and Appellant Ruby A.

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

Ruby A. (mother) and John M. (father) are the parents of Hazel A. (born in June 2014). Mother and father separately appeal a jurisdictional/dispositional order of the juvenile court declaring Hazel a juvenile court dependent pursuant to Welfare and Institutions Code¹ section 300, subdivisions (b) and (j), and ordering mother to participate in family reunification services. We conclude that mother's conduct does not give rise to jurisdiction, and therefore we dismiss paragraphs b-2 and j-2 of the petition. We affirm as to father. We decline to reach mother's challenge to the dispositional order because it has been rendered moot by a subsequent custody order.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Detention Report

On July 5, 2016, the Los Angeles County Department of Children and Family Services (DCFS) received an anonymous report that mother was using methamphetamines, had drug paraphernalia in two-year-old Hazel's stroller, and was not allowing father to see Hazel.

A children's social worker (CSW) spoke to father by telephone on July 12, 2016. Father said he recently had been released from prison. Father said he had not been in a relationship with mother since Hazel was born. Mother was not

¹ All subsequent statutory references are to the Welfare and Institutions Code.

currently allowing him to see Hazel. The CSW noted that during the interview, father “was speaking very fast and mumbling,” and it was difficult for the CSW to understand what father was saying.

The CSW visited mother and Hazel at their home on July 12, 2016. The CSW observed that the apartment was clean and organized and there was adequate food in the refrigerator. Mother agreed to let the CSW examine her diaper bag and stroller, saying, “‘I have nothing to hide.’” The CSW did not find anything inappropriate in the diaper bag or stroller. Mother reported that Hazel regularly saw a pediatrician, was current with her immunizations, had no medical issues, and was developmentally on target. The CSW reported that Hazel had no marks or bruises on her body, and was “active, friendly, and comfortable in her environment.”

Mother said she had had custody of Hazel since the child’s birth. Father had not seen Hazel since the child was about four months old. Mother believed father had reported her to DCFS because he was upset that she had not allowed him to see Hazel on her birthday. Mother said she did not want to be around father because she “has come a long way and she doesn’t want any involvement with him.”

Mother said she had been in the foster care system between the ages of six and 19, and had begun using drugs when she was 14 or 15 years old. Mother admitted using drugs with father, but said she stopped when she was pregnant with Hazel. Mother said Hazel was her reason to stay off drugs, telling the CSW, “‘There are no temptations because I am happy. Hazel has taught me a lot. She taught me to be a stronger person.’” Mother said she had recently sought counseling to deal with a

past trauma, and that she received support from a close friend and the paternal grandparents of her three older children, who were the children's legal guardians.

The paternal grandparents reported that they had legal guardianship of mother's three older children. They said mother and Hazel visited frequently, and they had no concerns for Hazel's safety or well-being. Mother's friend gave a similar report, stating that mother took excellent care of Hazel, and that she had never suspected mother of being under the influence of drugs or alcohol. Hazel's medical records indicated that she was up to date on her immunizations, and Hazel's pediatrician told the CSW he had no suspicions of child abuse or neglect.

Mother agreed to drug test, and she tested negative for all substances on July 14 and August 2, 2016. Father claimed he could not drug test on July 13 because he did not have identification; on July 20, he tested positive for amphetamines and methamphetamine.

On August 19, 2016, the juvenile court declined to make any detention findings and ordered Hazel placed with mother.

II.

Petitions

DCFS filed a juvenile dependency petition on August 19, 2016, and filed a first amended petition on October 4, 2016. The first amended petition alleged:

(b-1, j-1): Father is a current abuser of amphetamines and methamphetamines, and has a criminal history, including convictions of possession of controlled substances and possession of controlled substance paraphernalia. On July 20, 2016, father had a positive toxicology screen for amphetamines and methamphetamines. Hazel's half-siblings were juvenile court

dependents and received permanent placement services due in part to father's drug-related criminal convictions. Father's substance abuse endangers Hazel's physical health and safety and places the child at risk of serious physical harm, damage, and danger.

(b-2, j-2): Mother has an unresolved history of substance abuse, which renders her incapable of providing regular care of Hazel. Hazel's half-siblings were prior dependents of the juvenile court and received permanent placement services due in part to mother's substance abuse. Mother admits to drug use as recently as 2014, and admits that she has never completed a drug rehabilitation program.

III.

Jurisdiction and Disposition

A. Report

The jurisdiction/disposition report, filed October 4, 2016, stated as follows.

1. Mother

Mother told the dependency investigator that she began using drugs at about age 13. She had participated in many court-ordered treatment programs, but continued using drugs until 2014. Mother's drug use resulted in multiple arrests for drug offenses and a prior dependency case, as a result of which she lost custody of her three older children.

Mother said she began dating father about two months before she became pregnant with Hazel. Before mother learned she was pregnant, she and father used methamphetamines on almost a daily basis. However, mother stopped using methamphetamines when she learned she was pregnant, and had not used drugs of any kind during her pregnancy with Hazel.

Mother said she ended her relationship with father when she was about seven months pregnant with Hazel. She had no further contact with father until Hazel was about four months old, at which time she discovered father was still using drugs and therefore broke off further contact with him. Mother said she had no plans of reconciling with father and did not want him to know her home address or phone number.

As of the time of the interview, mother said she had been sober for more than two years. Mother said she had maintained her sobriety by becoming involved with her church, attending spiritual support groups, avoiding other substance abusers, participating in individual counseling, and relying on supportive friends and family members. Mother said maintaining her sobriety was challenging, but she planned to remain sober to prevent Hazel from being removed from her care and for her own physical and mental well-being.

DCFS reported that mother and Hazel were living in a “clean and orderly” one-bedroom apartment with a roommate. “Plenty of food, clothing, and other living necessities were observed in the home for the child. The mother and her roommate denied having any weapons in the home, and no child safety hazards were observed.” The dependency investigator observed that Hazel “appeared to . . . be bonded to the mother and the mother attended to the child’s needs when the child called for her attention.”

In a “Last Minute Information for the Court,” DCFS advised the court as follows: “[An] anonymous informant reported to [the dependency investigator] that she has known the mother for about 2 years. The informant said she is aware of the mother’s substance abuse history and of her prior dependency

history. However, she has no concerns of the level of care the mother is providing for Hazel. The informant said during the time she has known the mother, she has never seen the mother use drugs, drink alcohol, nor has the mother ever appeared to be under the influence of any substance. The informant said she believes the mother is making changes in her life by attending church and surrounding herself with 'church members.' The informant said that if at any time she felt that the mother was placing the child at risk she would take measures to protect the child by calling DCFS. The informant further stated that in her opinion, the child's father is accusing the mother of being a current drug user only to sabotage the mother's opportunity to have Hazel in her custody. The informant reiterated that to her knowledge the mother is currently not using drugs."

Records obtained by DCFS indicated that in 2010 and 2011, juvenile dependency petitions were filed on behalf of mother's three older children, alleging, among other things, that mother used methamphetamines and amphetamines. In 2011, mother's family reunification services were terminated, and the three children were placed in legal guardianship with their paternal grandparents. Mother had been arrested for and/or convicted of substance-related crimes in 2012 and 2013, but had no criminal history since 2013.

2. Father

Father claimed that he and mother used drugs together while she was pregnant with Hazel. His relationship with mother ended when she was seven months pregnant, and he did not see mother again until Hazel was three or four months old. At that time, father said, he and mother went back to using drugs together, but they lost contact when he was incarcerated. He

said he had not seen mother use drugs recently, but believed she was still using because “his friends have told him that they have seen her ‘hanging around in parks with others who use drugs.’” Father claimed mother was “‘lying’” to DCFS about not using drugs and having stable housing. Father admitted that he had not been involved in Hazel’s life and had last seen her when she was three or four months old.

Father admitted to an extensive substance abuse history, including recent methamphetamines use. However, he “denied being a current ‘active’ drug user” and claimed that “‘[h]e purposely used drugs in July so that a DCFS investigation could be conducted with the intention of him locating his child Hazel.’” When asked to elaborate, father said: “‘I was trying to find my daughter Hazel and [mother] had been keeping her from me and I had no clue[] of where they were. The last time I saw Hazel was when she was about 3 or 4 months old. I knew that if I tested dirty for drugs you guys would find Hazel because I already had a case open with my other kids. I knew that you guys would locate her.’ When [the dependency investigator] asked the father why he had not been part of the child’s life, he stated, ‘Because I really did not want any more kids, and [mother] decided that she wanted nothing to do with me because I cheated on her.’ [¶] The father further stated that prior to testing positive for methamphetamines on 07/20/2016 he had not used any type of drugs for about one year. However, he admitted that the only reason he had not used drugs was because he was incarcerated [in] 2015 [¶] When [the dependency investigator] asked the father to state how he plans to make changes in his life he did not provide specific details but admitted that he was not interested in participating in a substance abuse program because, ‘All he

wants are visits with Hazel and he is not seeking custody of her.’ The father said that in the past he has participated in court ordered substance abuse programs, however, he has never completed a program and has struggled to maintain sobriety, resulting in his multiple arrest[s] and convictions for drug offenses, losing custody of his children and his parental rights being terminated.”

Father said he had five children with five different women. He admitted he had never been involved in any of his children’s lives and had never supported any of them financially. Father’s parental rights had been terminated as to two of his children; the other three children were living with their mothers.

Father has a lengthy criminal history, beginning in 1994 and continuing through 2015. Most recently, father was sentenced to 90 days in county jail in December 2014, and to 16 months in county jail in June 2015.

DCFS noted that although father had been granted supervised visits with Hazel, father had cancelled both visits arranged by DCFS and had not arranged any other visits.

3. DCFS’s Recommendation

DCFS reported that during the course of its investigation, there were “no indicators that the mother was neglecting [Hazel] and no indicators that the mother is a current substance abuser. On 7/19/16 and 8/3/16, the mother completed [on-demand drug tests] and the results returned negative for drugs and alcohol. Furthermore, . . . the child Hazel appeared to be well care[d] for, the mother was providing living necessities for the child, she had a place to live, and the mother and child had family support[].” Further, police records indicated “no call logs or police reports.”

However, DCFS stated that although it “does not disregard” mother’s efforts to protect Hazel from abuse and neglect, it believed mother’s past substance abuse posed a risk to Hazel: “[Mother] has an unresolved history of substance abuse, including inhalants, marijuana, alcohol, amphetamines and methamphetamines, which renders the mother incapable of providing regular care of the child. The child’s siblings . . . were prior dependents of the Juvenile Court due in part to mother’s substance abuse, including mother being under the influence of alcohol while the children were in the mother’s care and supervision and mother testing positive for amphetamines and methamphetamines on 9/2/11 and 10/4/10. The mother failed to reunify with the child’s siblings and they received Permanent Placement Services due to the mother’s substance abuse. The mother has a criminal history including a conviction for possession of [a] control[led] substance in July 2013. The mother admits to substance abuse as recently as 2014, including using with the father The mother admits that she has never completed a drug abuse program.” DCFS thus recommended the juvenile court sustain the amended petition as to mother.

With regard to father, DCFS noted that Hazel “is at risk of abuse and/or neglect due to [father]’s current substance abuse, substance abuse history, DCFS/Dependency history and extensive criminal history. The father failed to address his substance abuse problem through his most current dependency case resulting in his parental rights being terminated . . . with respect to his children [Ma.M. and Mi.M.]. In addition, father stated that he does not have any interest in substance abuse treatment; however, he will consider it if he is able to visit with child/Hazel. Furthermore, given there is no family law order in

place pertaining to the child Hazel, the father was legally entitled to have access to [Hazel], which placed the child at a high risk of abuse and neglect.”

B. Hearing

At the October 6, 2016 hearing, mother’s counsel urged that there was no evidence mother had used drugs since 2014, and thus asked that the allegations against mother be dismissed. Father’s counsel suggested the petition should be dismissed in its entirety, urging that father had not been in contact with Hazel, and thus no behavior on his part could have placed Hazel at risk of harm.

County counsel urged the court to sustain the petition, place Hazel with mother, and order mother to drug test, suggesting, “One of the good things about [testing requirements] is they have a prophylactic effect. Even if [parents] are attempting to relapse, they know, ‘I better not do that.’ So it keeps them sober. We think that’s a good thing to have in place.”

At the conclusion of argument, the court sustained all the allegations of the first amended petition, explaining as follows: “I’ve got two people who have lengthy, chronic drug histories, [who have] already lost children to the system because of that [¶] And I’ll acknowledge, [mother’s counsel], the mom seems to be holding it together right now. . . . [But] it is beyond the pale to say, ‘Oh, well. Two years she’s been sober. Let’s just scrub out all of these other years of chronic drug use and abuse, losing children to the system because of it and say everything is going to be okay.’ . . . [¶] . . . [¶]

“The record is replete with evidence that [mother is] a chronic drug user and puts the child at risk on account of that. And [father] is too.”

With regard to disposition, the court ordered Hazel placed with mother and ordered DCFS to provide mother with family maintenance services, including individual counseling, parenting education, and random drug testing. No family reunification services were granted for father, but father was granted monitored visits.

Mother and father timely appealed from the October 6, 2016 order.

IV.

Subsequent Juvenile Court Proceedings

On October 11, 2017, DCFS filed a request for judicial notice of post-judgment evidence, namely: (1) an October 5, 2017 minute order, and (2) an October 5, 2017 “Custody Order—Juvenile—Final Judgment.” These documents reflect that on October 5, 2017, the juvenile court terminated its jurisdiction and granted mother full legal and physical custody of Hazel. Father was granted supervised visitation once per week for two hours per visit “or as arranged upon [father’s] release from incarceration.” Further, “The monitor for father’s visits is to be a professional monitor paid for by the father or a monitor agreed to by the parties. Mother is not to be the monitor for the father’s visits. Father is not allowed to visit or reside in the family home without a further order of the Superior Court.”

The same day, DCFS moved to dismiss the appeals on the ground that “the parents’ appellate challenges have been rendered moot by” the juvenile court’s October 5, 2017 orders. Father filed an opposition to the motion to dismiss.

CONTENTIONS

Mother and father contend the juvenile court erred in exercising jurisdiction over Hazel because (1) there was no

substantial evidence mother had used illicit drugs since Hazel's birth, and (2) although father continued to use drugs, he had no contact with Hazel and mother was able and willing to protect Hazel from him. The parents also contend the dispositional orders should be reversed because there was no need for ongoing supervision. DCFS contends the appeals should be dismissed because the juvenile court's termination of jurisdiction has rendered the appeals moot.

DISCUSSION

I.

Motion to Dismiss

DCFS urges that the parents' appeals have been rendered moot by the juvenile court's termination of dependency jurisdiction, and thus we should dismiss the appeals. For the reasons that follow, we conclude that the appellate challenges are not moot, and thus we deny the motion to dismiss.

“‘As a general rule, “an appeal presenting only abstract or academic questions is subject to dismissal as moot.” [Citation.]’ [Citation.] However, where a judgment dismissing the dependency action is challenged on appeal the case ‘is not moot *if* the purported error is of such magnitude as to infect the outcome of [subsequent proceedings] *or* where the alleged defect undermines the juvenile court's initial jurisdictional finding. Consequently the question of mootness must be decided on a case-by-case basis.’ [Citation.]” (*In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547 (*Joshua C.*)).

The fact that a dependency action has been dismissed “does not preclude review of a significant basis for the assertion of jurisdiction where exercise of that jurisdiction has resulted in orders which continue to adversely affect appellant.” (*Joshua C.*,

supra, 24 Cal.App.4th at p. 1548.) In the present case, the juvenile court’s jurisdictional findings with regard to father were a predicate for the custody order, which granted mother sole legal and physical custody of Hazel and permitted father only limited supervised visitation. Because the jurisdictional findings are the basis for the restrictive visitation and custody orders, “error in the former undermines the foundation for the latter.” (*Ibid.*) Accordingly, we decline to dismiss father’s appeal.

Mother’s appeal presents a closer case. Because mother has already obtained in the juvenile court all of the relief she seeks on appeal, we need not reach the merits of her appeal. However, because mother’s and father’s claims are intertwined and the jurisdictional findings concerning mother “could be prejudicial to [her] or could potentially impact the current or future dependency proceedings” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762), we exercise our discretion to consider on the merits mother’s challenge to the jurisdictional finding.²

II.

Governing Legal Standards and Standard of Review

“In dependency proceedings, the social services agency has the burden to prove by a preponderance of the evidence that the minor who is the subject of the dependency petition comes under the juvenile court’s jurisdiction. [Citations.] We review the jurisdictional findings for substantial evidence. [Citation.] We consider the entire record, drawing all reasonable inferences in

² We will not address mother’s challenge to the dispositional order, however. The dispositional order has been superseded by the custody order, and thus mother’s challenge to the dispositional order is moot.

support of the juvenile court's findings and affirming the order even if other evidence supports a different finding. [Citation.] We do not consider the credibility of witnesses or reweigh the evidence. [Citation.] Substantial evidence does not mean 'any evidence,' however, and we ultimately consider whether a reasonable trier of fact would make the challenged ruling in light of the entire record. [Citation.] The parent has the burden on appeal of showing there is insufficient evidence to support the juvenile court's order. [Citation.]" (*In re Isabella F.* (2014) 226 Cal.App.4th 128, 137–138 (*Isabella F.*).)

A child may be adjudged a juvenile court dependent pursuant to section 300, subdivision (b) if he or she "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 inability of the parent or guardian to provide regular care for the child due to the parent's . . . substance abuse." A child may be adjudged a juvenile court dependent pursuant to section 300, subdivision (j) 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."

A jurisdictional finding under section 300 requires
“ “(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.” (*In re Rocco M.* [(1991)] 1 Cal.App.4th [814,] 820.) (*In re Savannah M.* [(2005)] 131 Cal.App.4th [1387,] 1396; see also *In re David M.* [(2005)] 134 Cal.App.4th [822,] 829.) The third element ‘effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur).’ (*In re Savannah M., supra*, at p. 1396.)

“Although evidence of past conduct may be probative of current conditions, the court must determine ‘whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm.’ (*In re Rocco M., supra*, 1 Cal.App.4th at p. 824; see *In re Janet T.* (2001) 93 Cal.App.4th 377, 388.) 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 Savannah M., supra*, 131 Cal.App.4th at p. 1394.)” (*In re James R.* (2009) 176 Cal.App.4th 129, 135–136.) “Perceptions of risk, rather than actual evidence of risk, do not suffice as substantial evidence.” (*Id.* at p. 137.)

III.

The Juvenile Court’s Jurisdictional Findings

A. Findings As to Mother

Paragraphs b-2 and j-2 of the first amended petition allege that mother has an unresolved history of substance abuse, which renders her incapable of providing regular care of Hazel; Hazel’s half-siblings were prior dependents of the juvenile court and received permanent placement services due in part to mother’s

substance abuse; and mother used drugs as recently as 2014 and never completed a drug rehabilitation program. As a result, “mother’s unresolved substance abuse endangers the child’s physical health and safety, and creates a detrimental home environment, and places the child at risk of physical harm, damage and danger.”

There is no dispute that mother has a history of substance abuse, admitted using methamphetamines until 2014, and lost custody of her three older children as a result of her substance abuse. The question before us, however, is not whether mother abused substances *in the past*, but whether there was, at the time of the jurisdictional hearing, a substantial risk that Hazel would suffer *future* serious physical harm or illness as a result of mother’s substance abuse. We conclude there was not, for the following reasons:

(1) Mother told the CSW that she had stopped using methamphetamines more than two years earlier, when she learned she was pregnant with Hazel. Although father said mother continued to use methamphetamines during part of her pregnancy and again when Hazel was about three months old, father had not seen mother since approximately October 2014, and thus he was not competent to testify about mother’s purported drug use during the two-year period immediately before the October 6, 2016 hearing.

(2) Mother allowed the CSW to examine her diaper bag and stroller, saying she had “nothing to hide.” The CSW did not find anything suggestive of substance use in either the diaper bag or the stroller.

(3) Mother agreed to drug test for DCFS, and tested negative for all substances on July 14 and August 2, 2016.

(4) Although mother had been arrested for and/or convicted of substance-related crimes in 2012 and 2013, she had no criminal record after 2013. Police records indicated no calls or police reports associated with mother's home address, where she had lived for about a year.

(5) No one in regular contact with mother and Hazel reported any suspicion that mother was using drugs. To the contrary, with the exception of father (discussed below), everyone DCFS interviewed reported that mother had maintained her sobriety and took excellent care of Hazel. The guardians of mother's older children (whom Hazel called "grandma" and "grandpa") said they saw mother and Hazel regularly and had no concerns about Hazel's safety or well-being. Similarly, a close friend of mother told the CSW that she saw no signs that mother was under the influence of drugs or alcohol, and reported that mother took excellent care of Hazel.

(6) Hazel's medical records indicated that she was up to date on her immunizations, and Hazel's pediatrician told the CSW he had no suspicions of child abuse or neglect.

(7) The CSW visited mother's home on several occasions and noted that the home was clean and well organized, and there was adequate food in the refrigerator. The CSW described Hazel as "active, friendly, and comfortable in her environment" and "bonded to the mother."

(8) Mother had taken many positive steps to help her maintain her sobriety, including ending her relationship with father, becoming involved with her church, avoiding substance abusers, attending support groups, participating in individual counseling, and relying on supportive friends and family members.

(9) Mother had refused to allow father to have a relationship with Hazel because he was continuing to use illegal substances.

The only person who suggested mother was still abusing drugs was father—but by father’s own admission, he had not seen mother (or Hazel) for nearly two years. Indeed, father said he sought DCFS’s involvement in his daughter’s life because he “had no clue[] of where [mother and Hazel] were” and wanted DCFS to “find Hazel” for him. Even by his own account, then, father could not have had any first-hand knowledge of mother’s supposed drug use.

Father claimed he believed mother was still using drugs because “his friends have told him that they have seen her ‘hanging around in parks with others who use drugs.’” Father never identified the friends or gave DCFS any way to confirm his unsubstantiated account, however, and this uncorroborated hearsay from unknown sources was the only evidence offered by DCFS to suggest that mother may have used drugs after October 2014. “[S]ubstantial evidence does not mean ‘any evidence’ . . . and we ultimately consider whether a reasonable trier of fact would make the challenged ruling in light of the entire record.” (*Isabella F.*, *supra*, 226 Cal.App.4th at p. 138; see also *In re Lucero L.* (2000) 22 Cal.4th 1227, 1244 [“ ‘ “[M]ere uncorroborated hearsay or rumor does not constitute substantial evidence.” There must be substantial evidence to support . . . a . . . ruling, and hearsay, unless specially permitted by statute, is not competent evidence to that end.’ ”].) In the present case, because father’s statement is, at best, “uncorroborated hearsay or rumor,” it is not substantial evidence that mother used drugs after October 2014.

DCFS also urges that even if mother had been sober for two years, the trial court nonetheless could reasonably have concluded that mother was likely to relapse because she had used drugs for many years and was “in the nascent stages of treatment.” But none of the cases DCFS relies on support the proposition that *two years* of sobriety—in this case, even while single-parenting a very young child—constitutes “nascent” recovery. (See *In re J.C.* (2014) 233 Cal.App.4th 1, 6–7 [juvenile court did not err by declining to place newborn with father, who had long history of drug abuse, had been sober for only seven months, and whose participation in drug treatment was “‘sluggish’”]; *In re Levi U.* (2000) 78 Cal.App.4th 191, 200 [mother drug free “for a period of only slightly more than two months”]; *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423 [no change of circumstances within meaning of section 388 where father’s “seven months of sobriety . . . while commendable, was nothing new. He had a history of drug use dating back to his college days, and since then his periods of sobriety alternated with recurring drug use.”]; *In re Amber M.* (2002) 103 Cal.App.4th 681, 686 [although mother had been clean for 372 days, she had previously relapsed twice during the course of her dependency case, once after more than 300 days of sobriety]; compare *In re Aljamie D.* (2000) 84 Cal.App.4th 424, 432 [mother’s *two years* of sobriety demonstrated changed circumstances].)

Finally, DCFS urges that the juvenile court properly exercised jurisdiction over Hazel because “the allegations here were not simply brought under section 300, subdivision (b), but were also alleged and sustained under section 300, subdivision (j),” which “‘was intended to *expand* the grounds for the exercise of jurisdiction as to children whose sibling has been abused or

neglected.’ ” We do not agree. Section 300, subdivision (j)³ is based on the common-sense principle that a parent who has abused or neglected one child is more likely to abuse or neglect another child. Under the circumstances of the present case, however, subdivision (j) adds little to the analysis. It is undisputed that mother has a lengthy history of substance abuse and, as a result of her substance abuse, lost custody of her three older children. In the absence of any additional evidence, one might reasonably infer that mother is likely to continue abusing substances and therefore to be unable to care for her fourth child. In the present case, however, there is abundant additional evidence—namely, that mother has been successfully caring for her fourth child for two years, and that none of the people with whom she is in regular contact, including friends, family, and her child’s pediatrician, suspect that she has resumed using illegal substances or is otherwise neglecting her child. Accordingly, subdivision (j) provides no more a basis for jurisdiction than does subdivision (b).

For all the foregoing reasons, we conclude that the juvenile court erred in sustaining paragraphs b-2 and j-2 of the petition.

³ Section 300, subdivision (j) provides that a child is within the jurisdiction of the juvenile court 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.”

B. Findings As to Father

Paragraphs b-1 and j-1 of the first amended petition allege that father is a current abuser of amphetamines and methamphetamines; has a criminal history, including convictions for possession of controlled substances and possession of controlled substance paraphernalia; had a positive toxicology screen for amphetamines and methamphetamines on July 20, 2016; and had his parental rights to two older children terminated, in part due to father's drug-related criminal convictions. Father's substance abuse is alleged to endanger Hazel's physical health and safety and to place her at risk of serious physical harm, damage, and danger.

The allegations concerning father's drug abuse, criminal history, and termination of parental rights indisputably are supported by substantial evidence. Mother and father contend, however, that because father has had no contact with Hazel, his conduct does not place her at risk of harm. For the reasons that follow, we do not agree.

In *Isabella F.*, *supra*, 226 Cal.App.4th at p. 140, the appellate court found insufficient evidence to support a finding that the father's mental illness placed the child at risk of harm because "it had been a long time since [the child] had seen father, and the record contains no indication that father is or will be involved in her life." The court explained: "The purpose of the dependency system is to protect children who are currently being abused, neglected, or exploited, or who are at risk of that harm. (§ 300.2.) If father returns to Isabella's life and there is evidence that he poses a risk to Isabella's well-being, the Department may of course file dependency proceedings in order to protect her best interests. But where father was not alleged to have caused

Isabella any harm and there was no evidence presented that he was likely to do so in the future, sustaining the petition's allegation [against father] was reversible error." (*Id.* at pp. 140–141.)

The present case is distinguishable from *Isabella F.* in a critical respect: Here, father *has* attempted to return to Hazel's life and seeks visitation with her. Indeed, it appears that father was willing to make an unsubstantiated child abuse report in order either to secure visitation or to punish mother for refusing to allow him to visit. Accordingly, the juvenile court did not err in sustaining the b-1 and j-1 allegations against father.

DISPOSITION

The request for judicial notice, filed October 11, 2017, is granted. DCFS's motion to dismiss, filed October 11, 2017, is denied.

The October 6, 2016 order is reversed in part with directions to dismiss paragraphs b-2 and j-2 of the petition. The order is otherwise affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

LAVIN, J.

STONE, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.