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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re H.H. et al., Persons Coming  
Under the Juvenile Court Law.

B285601  
(Los Angeles County  
Super. Ct. No. DK22976)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

V.D.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Kim L. Nguyen, Judge. Affirmed.

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 Stephanie Jo Reagan, Principal Deputy County Counsel, for Plaintiff and Respondent.

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In this dependency appeal, V.D. (mother) challenges the juvenile court's finding that her mental health condition posed a substantial risk of serious physical harm to her two young children. Mother also contends the juvenile court erred when it removed the children from her care without considering alternative measures. We affirm.

### **FACTUAL BACKGROUND**

The family first came to the Department of Children and Family Services' (DCFS) attention on August 11, 2016 when DCFS received a call after a suicide attempt at the family's home. The caller reported that father had received several text messages from mother, messages that said she was overwhelmed and tired of life. Father rushed home and found mother hanging in the garage. Mother had been taken to the hospital and was on life support and not expected to survive. The caller asked DCFS to follow up on the matter in order to ensure the safety of the parents' children, a one year old and a newborn baby. Mother was in a coma for a week, but survived.

DCFS subsequently interviewed the family. The home appeared appropriate, the children did not appear afraid of either parent, had no marks or bruises, and there were no clear indications of abuse or neglect. Mother said she was receiving mental health services. Father was also reportedly in counseling. Mother and father also appeared to have support from both the paternal and maternal families. Father appeared protective and agreed not to allow the children to be left alone with mother until

mother's mental health provider determined she was stable and doing well emotionally and mentally. DCFS gave mother and father referrals for counseling as well as other services they might need in the future. DCFS closed the referral for general neglect as unfounded.

DCFS received a second referral four months later. This time, the caller said mother recently broke a window and was yelling she wanted to kill herself. The caller said the children were at home, but they were not hurt. The caller said that although mother had been advised to attend mental health counseling, both mother and father had stopped attending as soon as DCFS closed its investigation. The caller believed mother continued to need counseling given that she was still threatening to kill herself.

DCFS investigated this referral. Paternal grandmother said mother was a good parent, but when mother has become upset, she says she no longer wants to live.<sup>1</sup> The last time paternal grandmother had heard mother say this was after she had given birth. Paternal grandmother was uncertain whether mother attempted suicide due to postpartum depression. DCFS also spoke with the maternal grandparents. They reported that when mother was younger, she repeatedly said she wanted to hurt herself, although she never carried out her threats.

When interviewed, mother admitted that after the August 2016 referral, she did not follow through with counseling or with a mental health assessment. She also admitted to more recent

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<sup>1</sup> Although the DCFS report initially refers to these grandparents as the paternal grandparents, the report later identifies them individually as the "MGM" (maternal grandmother) and the "MGF" (maternal grandfather).

suicidal ideation. Mother also admitted to not taking her prescribed medication and said she used marijuana instead. After its investigation, DCFS substantiated the December referral.

On December 28, 2016, DCFS conducted a child and family team meeting. On January 5, 2017, mother and father agreed to a voluntary family maintenance services plan. Mother agreed to participate in mental health services, including a psychotropic medication evaluation and medication monitoring. Mother and father agreed to participate in family preservation services, which could provide counseling, parenting, and other supportive services.

On January 11, 2017, a DCFS social worker met with mother and father and provided them with additional referrals. Mother gave the social worker a mental health assessment from that day, which documented mother's refusal to take medication. Mother insisted she did not want to take any medication and said she would rather take "herbs," referring to marijuana. She asked why DCFS had opened a case and said she could handle her mental health problems on her own.

On January 31, 2017, mother provided documentation showing she had a prescription for Zoloft, a psychotropic medication. However, she again said she would not take it. On February 8, 2017, a DCFS social worker met with both mother and father. Father said he stayed with mother and the children every day. He also said that paternal grandmother helped with the children to make sure that nothing happened again. Father said mother had been doing fine and explained to the social worker that mother did not want to take the medication because of things she had heard and that she preferred to take something

she was comfortable with. Mother said she had been smoking marijuana since she was young to deal with feelings and she did not want to take any of the medication because of what she had read on the internet.

On February 15, 2017, the family was referred for family preservation services. When mother was encouraged to take her medication as prescribed, she became visibly upset. On March 30, 2017, DCFS held another child and family team meeting. Mother insisted she did not want or need medication and was tired of DCFS bringing up her mental health history and suicide attempt. She said that when she attempted suicide in August, she was in a bad place and felt that killing herself would be best for everyone, including her children. She said everything was fine now, and she did not understand why DCFS was involved. Mother was reminded she had failed to follow through with her mental health treatment and that DCFS had received a report in December stating she had threatened to harm herself. Mother and father reiterated there was no need for DCFS intervention. With respect to medication, mother and father admitted smoking marijuana daily and said they both had medical marijuana cards.

As of April 3, 2017, mother still refused to take medication.<sup>2</sup> However, mother and father did participate in family preservation services, including parenting classes, counseling, and other supportive services and were cooperative with their in-home outreach counselor. On April 20, 2017, a follow-up child and family team meeting was held. Mother and

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<sup>2</sup> According to a medical chart note, as of May 4, 2017, mother was not currently taking medication.

father provided copies of their medical marijuana certificates. Mother said she smoked marijuana for depression and stress and that it kept her calm. Mother and father both reported that they used the marijuana outside the home. A DCFS representative explained the dangers of untreated mental health issues and told mother that DCFS believed there was a risk to the children based on her refusal to receive appropriate mental health treatment. Mother became upset and extremely emotional. Father maintained that the family did not need voluntary services. A supervising social worker at the meeting noticed superficial cuts on mother's left wrist indicative of someone who cut their wrists.

DCFS decided that voluntary services were no longer appropriate and that court supervision was now needed. The DCFS social worker concluded that although the parents had partially complied with the case plan, mother had failed to comply with the psychiatric and mental health recommendations. The social worker questioned father's protective capabilities. The social worker also said that mother had a fragile and disordered mental state. The social worker expressed concern that father supported mother's marijuana use as an alternative to prescribed medication because he too was a daily and frequent user of marijuana.

On May 9, 2017, DCFS obtained a protective custody warrant. On May 12, 2017, a DCFS social worker went to mother and father's home to serve the warrant and detain the children. Mother and father were visibly upset. Father told the social worker he had been doing what he could to protect the children and could not do anything about mother's condition, while mother refused to accept responsibility for their current state. The family preservation counselor asked if DCFS could provide the

family with more time given that they were making progress and the family preservation program would continue working closely with them. DCFS agreed to give mother and father more time to comply with the case plan objectives and the children were not detained.

DCFS conducted a further assessment, however, and concluded that these factors—the children’s tender age, mother’s August 2016 suicide attempt, the numerous recommendations from mental health professionals that mother take prescribed psychotropic medication, mother’s past suicidal ideation as a teenager, observations in April 2017 of cuts on mother’s wrists, mother’s marijuana use as well as her resistance to voluntary services—presented a high risk of detriment and future neglect of the children. On May 18, 2017, DCFS removed the children from mother’s custody. The children were left in father’s care with the understanding that mother would leave the home and father would remain in the home of the paternal grandparents.

## **PROCEDURAL HISTORY**

### **I. Dependency petition**

On May 18, 2017, DCFS filed a Welfare and Institutions Code section 300 dependency petition.<sup>3</sup> The petition was based on mother’s mental and emotional problems, father’s failure to protect the children from these problems, and mother’s and father’s abuse of marijuana. On May 19, 2017, the juvenile court held the initial hearing on the petition. DCFS prepared a detention report and a last minute information report for the court which included the above information, as well as a number

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<sup>3</sup> All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

of medical chart notes. A note from August 2016 indicated that mother had reported five prior suicidal gestures.

At the hearing, mother's counsel, father's counsel, and the children's counsel argued against detaining the children from mother. Mother's counsel admitted that mother had previously been uncooperative and told the juvenile court that mother would now be medication compliant and would stop smoking marijuana. The juvenile court said it was unsure of this commitment given that mother had not been medically compliant for months.

The juvenile court found that DCFS had met its burden to detain the children from mother and that a prima facie showing had been made that she presented a risk to the children by living in the home. The court ordered the children released to father on the condition that he reside with the paternal grandparents. The court encouraged mother to continue with mental health counseling, to see her therapist as much as possible, and to become medically compliant. The court ordered monitored visits a minimum of two times a week for two hours, with an approved monitor, and said that while mother could visit all day, she could not live in the home.

## **II. Jurisdiction and disposition report**

On June 20, 2017, a DCFS social worker interviewed mother. With respect to her mental and emotional problems, mother said she had been diagnosed with depression. Mother (then 22 years old) said she had starting smoking marijuana when she was 15 or 16 years old, and smoked it every day, mostly at night. Mother said she had a marijuana card and had been prescribed marijuana for her depression and anxiety. She said she had since stopped smoking marijuana and now drank a tea with marijuana at night.



Father said he used to see mother sad and isolated before she attempted to hang herself. He said she paid attention to the children and did what she had to do, but otherwise she would just stay in her room. He thought mother had postpartum depression. Father said he and mother had been having problems so he went elsewhere. He started receiving strange text messages from mother so he returned home around midnight. He found mother in the garage hanging from the ceiling. She was not breathing, her eyes were bloodshot, and he believed she was dead. He started CPR and the ambulance came and took her to the hospital. He said he learned at the hospital that mother had tried to kill herself before, but her parents did not take her seriously. According to father, mother was much better now. She took her medication and was neither isolated nor conducting herself the way she had before. He said the children needed and missed their mother. With respect to other allegations in the petition, father said that he and mother smoked marijuana almost every night. He said when the children were asleep, they would ask paternal grandmother to watch them, and he and mother would go to a friend's house to smoke.

On June 23, 2017, the social worker tried to contact mother's psychiatrist, Dr. Alan Tuckman. He was on vacation but the social worker was able to confirm that mother was a patient at the clinic; she was last seen on June 2, 2017, and she had been prescribed Lexapro. The social worker also spoke with the family's outreach counselor. The counselor said she had been working with the family since February 2017 and had no concerns to report. The counselor said she provided in-home counseling to the parents weekly and that both mother and father had finished their parenting classes. They had recently

been referred to a program to finish their schooling and to obtain job training. The counselor said mother had consistently participated in individual counseling and had initiated psychiatric treatment. The counselor also said the children were very well taken care of and the parents had the support of the paternal grandparents.

The social worker also tried to interview paternal grandmother. Paternal grandmother was not comfortable with mother and father knowing she was speaking to the social worker, and offered only that the children missed mother very much and mother and father had the support of the paternal grandparents. The social worker reported that mother admitted to writing suicide letters when she was younger. Mother said she had hoped to get her parents' attention and that she never acted on her suicidal ideation. Mother was not currently employed, but was attending a vocational training program. Mother also said she and father were on a waiting list for couples counseling. Mother said she saw her therapist weekly and had started taking medication in June.

Mother visited the children from 8:00 a.m. until they fell asleep, usually around 8:00 p.m. Paternal grandmother monitored the visits and reported that they were appropriate and she had no concerns. Father was also unemployed but, like mother, he was attending a vocational training program and working to obtain his high school diploma. He confirmed that he and mother were on a waiting list for couples counseling.

Mother and father both said they understood the importance of mother complying with her mental health treatment and both believed mother and the children needed her to return to the home as soon as possible. The social worker

reported a number of family strengths—mother and father had family support; they were participating in vocational training; they had completed their parenting program; they continued to participate in family preservation services; mother had initiated psychiatric treatment and was taking her medication; mother was visiting the children daily; and the children appeared well taken care of and were found in good spirits. However, the social worker stressed that mother had reported suicidal ideation for a long time, expressing the desire to kill herself in notes left for her parents which were never taken seriously and she had been self-medicating with marijuana. Given the children’s young ages, the social worker stressed that mother needed to treat her mental health diagnosis and learn to cope with life’s stressors without resorting to self-harm.

### **III. Last minute information report**

On July 12, 2017, DCFS submitted a last minute information report to the court. According to the report, DCFS had received information from an anonymous caller stating that mother was anxious and unstable during her visits at the home. She also continued to make threats about harming herself when arguing with father. The caller also reported that mother and paternal grandmother were not getting along, which was causing turmoil inside the family home. DCFS recommended that mother’s visits take place outside the family home and that they not be monitored by paternal grandmother until further assessment.

### **IV. Jurisdictional hearing**

#### **A. MOTHER’S TESTIMONY**

The juvenile court began the jurisdictional hearing on July 12, 2017. The court admitted the DCFS reports into

evidence. DCFS called mother as a witness. She confirmed she had been diagnosed with major depressive disorder and suicidal ideation. Mother said she was currently taking medication (Lexapro) every other day. She also testified about her August suicide attempt: “I really thought that, like—not that my kids would be better off because, no, they wouldn’t. But I couldn’t put it in my head, like, if we split up, the kids are going to suffer, like which side are they going to go to? I seen so many kids go through that, and I couldn’t do that to my kids. Like, I would rather, like, get out of the picture because I know I couldn’t be without my kids.” However, mother noted that she was different now. “That was my mentality then. Now, it’s different. Like, as long as I see them okay, if they’re okay, that’s my like—I don’t know, that’s my inspiration, like they’re okay. And I see like they’re perfect. Like they’re happy.”

Mother said that she thought if she killed herself she would be doing the children a favor. She felt they would be better off without her and that she did not want them to go through a custody battle. Mother confirmed the children were home at the time of the incident. She said they were with their grandparents in their room. Mother admitted that DCFS directed her to enroll in therapy and that she stopped attending counseling after DCFS closed its investigation. When asked why she stopped going to counseling, mother said she did not know she had to attend. She said her family never gave her the report from the hospital and did not tell her she needed medication or therapy. Mother testified she was currently in counseling and had been in counseling for four to five months. She found it helpful and denied having any further thoughts of hurting herself. She denied ever attempting to cut her wrists. When asked why she

had refused to take her medication, mother said she felt great at the time, not depressed, and did not feel like she needed it. She also testified that as soon as she did see the need, she told her psychiatrist, "I do need it now." Mother felt she now needed the medication and that it was helping. Mother agreed that she was still in the early stages of figuring out her medication and determining whether services were helping, and whether she could continue to benefit from them.

Mother testified that she and paternal grandmother did not have the best relationship and she did not plan to return to the family home. Mother was asked about the last minute information report, which reported she was anxious and unstable. Mother denied being unstable and said she was anxious about getting work and moving forward, but not in a negative way. Mother also said her relationship with father was good, and that what they had needed was to give each other space. On cross-examination by children's counsel, mother said her family would not take her to therapy, only to drug test. Mother denied that she continued to have suicidal ideations after her first suicide attempt. As to the December incident, mother denied she had threatened to kill herself and denied she had broken a window. Mother testified that she suspected the paternal grandparents had reported this incident. Mother confirmed there was tension between herself and paternal grandmother and that paternal grandmother had threatened to call DCFS. Although mother's relationship with paternal grandmother was not very good, mother said she trusted paternal grandmother with the children.

Mother testified that she participated in weekly individual counseling and had done so for four months. She had also been

prescribed Lexapro and had been taking it as prescribed. She said it made a difference in how she felt. Mother confirmed that she was taking a parenting class, was looking for work, and planned to continue in services even if the case were closed. She also intended to remain on her medication. Mother also testified that her relationship with father was great and had improved because before they were always together and now they had space. As to the August incident, mother said she made sure the children were safe before she attempted suicide and the children were unaware that she had attempted suicide. Mother also testified she smoked marijuana then but had not smoked marijuana for two and half months and had not consumed marijuana tea for one and half months.

On redirect examination, mother denied planning her suicide and said she had spontaneously texted father that she was about to commit suicide. Mother testified that her past suicidal ideations were just an attempt to get her parents' attention. When asked how the court could know going forward whether she would try again to commit suicide, mother said she did not have the same mentality. She also testified if she attempted suicide again, the children were now old enough to know she did something and she could not do that to them. She said she did not want to cause them any more pain and wanted to move forward.

The juvenile court also questioned mother. In response, mother testified that she lived with her brother and visited the children every day. She visited with them in the front yard because she was told that paternal grandmother no longer wanted her in the house. Mother confirmed she saw a therapist and had been seeing him on a regular basis for four to five

months. Mother confirmed she was also seeing a psychiatrist, who managed her medication. Mother took Lexapro every other day, as prescribed, and had been taking it for nearly three months. The juvenile court confirmed with mother that she was not on medication during her August suicide attempt or during the December incident. Mother agreed that she had used marijuana as a coping mechanism for relaxation, depression, and anxiety. After mother testified, DCFS told the juvenile court it had no more witnesses. Mother and father moved to have the allegations dismissed. The juvenile court denied the motions.

B. FATHER'S TESTIMONY

Father testified that mother was not anxious or unstable during visits, and just talked about wanting to get a job, move into her own place, and to continue doing everything she's been doing. Father said the only threats to herself that mother had made were on the day of the August incident and she had not made any since. Father said the December referral was made by paternal grandmother to get back at mother. Father testified he smoked marijuana with mother on an almost nightly basis. However, they only smoked at a friend's house, after the children were in bed and watched by paternal grandparents.

On cross-examination regarding mother's text messages on the day of her August suicide attempt, father testified that mother said she was tired of life and felt the children would be better off with father instead of her. The juvenile court asked father if he had been concerned that before August, mother had been sad and isolated and would not come out of her room. Father said he had been concerned and had tried to tell her to come out of her room. Father did not recall whether, after the incident, he had asked mother if she was supposed to be in

counseling. When asked whether mother's sadness before the August incident affected her ability to care for the children, father replied, "Honestly, no. She took care of kids like it was a normal day. Everything looked normal except for the fact when she was in the room."

#### C. COUNSELS' ARGUMENTS

Children's counsel argued although mother was now on medication and seeking mental health treatment, mother was only at the beginning of her treatment. Moreover, the August incident was not isolated. Mother had a history of threatening to harm herself, and mother and father were trying to minimize mother's mental health condition by portraying the August incident as an isolated event. Children's counsel also stressed that even after DCFS became involved in December, mother still refused to take medication—self-medicating with marijuana instead—and did not become compliant until the voluntary family maintenance plan failed. Children's counsel said that mother needed ongoing mental health support and mother and father needed to realize the seriousness of the incident.

Mother's counsel said that the petition should be dismissed in its entirety, arguing that there was no current risk or even a nexus to a substantial risk when mother attempted suicide eleven months ago. Mother's counsel stressed that there was no evidence the children were traumatized by or had been exposed to her suicide attempt. Mother also had been cooperative with DCFS, had completed parenting classes, was obtaining job training, and had been very insightful in terms of what it meant to co-parent. Mother's counsel also noted that mother was medication-compliant and seeing both a therapist and a



psychologist. Furthermore, there was evidence that even when mother was off her medication, the children still did well.

Father's counsel argued that father had no prior knowledge of mother's suicidal ideation and there was no evidence that mother's one suicide attempt caused any risk of harm to the children. Father's counsel stressed that father could not force mother to take her medication or go to counseling. Furthermore, the only indication father had before mother's suicide attempt was that mother had been feeling sad. Father's counsel asked that the petition be dismissed because it stood for the proposition that a parent who has attempted suicide cannot have children in their care.

DCFS's counsel stressed that DCFS had tried to provide remedial services and had been interacting with the family for six months before the petition was filed. DCFS's counsel stated that mother's mental health issues were not minor and there was evidence not just of one suicide attempt, which had put mother in a coma for a week, but evidence mother had had these thoughts before DCFS counsel emphasized the children's young ages, mother's August suicide attempt, the recommendations from mental health professionals that she take prescribed psychotropic medication, her past suicidal ideation, observations of cuts on her wrist from April, her lack of cooperation with DCFS, and evidence that mother appeared anxious and unstable. DCFS counsel also argued that because mother was only at the beginning stages of recovery, there was a current risk to the children. It had only been two months since detention, DCFS counsel noted, and mother had not shown enough progress. DCFS counsel advised the juvenile court that if it were inclined to dismiss the case, that it do so pursuant to section 360,

subdivision (b), as DCFS strongly believed the family needed services and supervision.

### **JURISDICTIONAL FINDINGS**

The juvenile court acknowledged that, standing alone, a parent's mental health needs and issues are insufficient to support jurisdiction and there is no per se rule that jurisdiction is appropriate merely because a parent has a psychiatric diagnosis or condition. Therefore, the court stated, its decision was not based on a per se rule but rather mother's actions after her suicide attempt. Specifically, the court noted: "After the August suicide attempt, mother was prescribed medication and referred to therapy . . . [but] mother did not remain medication compliant or under the necessary therapy. There are statements in the reports that mother believed that she did not need the medication at that time and she did not need a psychiatric evaluation. And mother agreed on the stand that after August, she did not take those steps to take care of her mental health. And . . . it was clear that this had an impact because there is evidence that in December, mother stated that she wanted to kill herself and broke a window when the children were at home. I recognize that there was testimony to the contrary, but I find the statements in the report more credible. Mother is now on medication and seeing her therapist weekly. I want to commend mother for that. She is making progress. But given that mother has been struggling with mental health needs and suicidal ideation for some time now, and given that when supervision was closed in this case initially, that mother stopped taking her medication and undergoing therapy. I do believe that mother's recovery is in the early stages and that there is a present risk of harm to the minors."

The juvenile court struck the allegation concerning father's failure to protect the children and the allegations that mother's and father's marijuana abuse endangered the children. As sustained, the juvenile found true that mother "suffers from mental and emotional problems including a diagnosis of Major Depressive Order, suicidal ideation and suicide attempts, which renders the mother incapable of providing the children with regular care and supervision. In August 2016 and on prior occasions, the mother was involuntarily hospitalized for the evaluation and treatment of the mother's psychiatric condition. Remedial services have failed to resolve the family problems in that the mother refuses to take the mother's psychiatric medication as prescribed. The mother's mental and emotional problems endanger the children's physical health and safety and place the children at risk of serious physical harm, damage, danger and failure to protect."

#### **DISPOSITION HEARING**

The juvenile court proceeded immediately to disposition. DCFS recommended that the children live with father on the condition that he reside with the paternal grandparents or in another DCFS-approved location, and that mother's visits remain monitored with DCFS having discretion to liberalize visits. Children's counsel joined DCFS's request. Mother's counsel argued that DCFS had not shown by clear and convincing evidence the requirements for removal under section 361, subdivision (c), based on mother's current compliance with services, and her completion of all the commitments she made at the detention hearing.

The juvenile court agreed that DCFS had not met its burden "to show clear and convincing evidence of harm to the

minors without any reasonable services to be put in place to prevent removal.” The juvenile court declared the children dependents of the juvenile court and ordered them placed in the “home of parents,” explaining that it found by clear and convincing evidence “that substantial risk of detriment exists to the minors’ physical health, safety, protection, and/or physical or emotional well-being, but the minors can be safely placed in the home of parents under the supervision of [DCFS].” The court therefore ordered that the children reside in the home of parents on the condition that father reside with the paternal grandparents and that mother not reside in the home at this time.

The juvenile court indicated that with services in place, the children did not need to be removed from mother and noted that because this was a “home of parent” order, visits would not need to be monitored. The court ordered services for mother and father as set for in their individual case plans. The court also clarified that the children were not permitted to reside in mother’s home.

Following the disposition hearing, DCFS filed a “walk-on” request asking that the “home of parent” order be vacated in order to ensure the disposition order was legally sound and consistent with the safety of the children. The juvenile court advised the parties that pursuant to *Le Francios v. Goel* (2005) 35 Cal.4th 1094, the court was exercising its discretion to reconsider its interim order, noting it believed it had made an error with respect to whether, given the evidence before the court, the children would be at risk if given overnight visits with mother. Following argument by the parties, the juvenile court reiterated that it had the authority to reconsider its ruling, and found by

clear and convincing evidence that remaining in the home of mother would pose a substantial risk of detriment to the children and that there were no reasonable means by which to protect them without removing them from mother's physical custody. The court ordered that the children be placed in father's home, on condition he reside with the paternal grandparents, and ordered that mother not reside in the family home. The court ordered that the monitored visits continue, along with unmonitored day visits from four to six hours, four times a week.

## **DISCUSSION**

### **I. Standard of review**

Section 300 subdivision (b)(1), authorizes jurisdiction when the child has suffered—or there is a substantial risk the child will suffer—serious physical harm or illness, as a result of the failure or inability of the child's parent to adequately supervise or protect the child or inability of the parent to provide regular care for the child due to the parent's mental illness. However, "harm may not be presumed from the mere fact of mental illness of a parent." (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318.)

Here, the juvenile court sustained allegations under section 300, subdivision (b)(1), finding that mother's mental and emotional problems, including a diagnosis of major depressive disorder, suicidal ideation and suicide attempts, rendered her incapable of providing the children with regular care and supervision, endangered the children's physical health and safety and placed them at substantial risk of serious physical harm.

On appeal, mother contends that the juvenile court lacked sufficient evidence to establish jurisdiction under section 300, subdivision (b)(1). The standard of review in juvenile dependency cases is the same as in other appeals on grounds of insufficiency

of the evidence. Therefore, we review the record to determine whether any substantial evidence, contradicted or not, supports the juvenile court's conclusions. The substantial evidence test is the appropriate standard of review for both the jurisdictional and dispositional findings. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654; *In re P.A.* (2006) 144 Cal.App.4th 1339, 1344.) The term "substantial evidence" means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. It is evidence which is reasonable in nature, credible, and of solid value. (*In re Jerry M.* (1997) 59 Cal.App.4th 289, 298.) Under this standard of review, "[a]ll conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible." (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547, superseded by statute on another ground in *In re David H.* (2008) 165 Cal.App.4th 1626, 1642, fn. 14.)

We also review disposition orders removing a child from parental custody for substantial evidence. (*In re John M* (2012) 212 Cal.App.4th 1117, 1126.) "On appeal from a dispositional order removing a child from her parent, we apply the substantial evidence standard of review, keeping in mind that the trial court was required to make its order based on the higher standard of clear and convincing evidence." (*In re Noe F.* (2013) 213 Cal.App.4th 358, 367.)

## **II. Merits**

Mother contends that the juvenile court lacked sufficient evidence to establish that the children had suffered, or that there was a substantial risk they would suffer, serious physical harm or illness based on mother's inability to provide regular care due to her mental illness. In determining whether sufficient evidence

established jurisdiction under section 300, subdivision (b)(1), the facts supporting dependency jurisdiction are cumulative. (*In re T.V.* (2013) 217 Cal.App.4th 126, 133.) “[T]he court ‘must consider all the circumstances affecting the child, wherever they occur.’” (*Ibid.*) Furthermore, the focus of a dependency proceeding is to prevent harm to the child. Therefore, the juvenile court “need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.” (*In re R.V.* (2012) 208 Cal.App.4th 837, 843.)

According to mother, the record contained no evidence of actual harm or substantial risk of such harm to the children as a consequence of mother’s mental illness at any time. Mother notes that during her August 2016 suicide attempt, the children were asleep in the paternal grandparents’ home. Mother texted father, who came home immediately. The social worker who later examined the children noted that they seemed well cared for and bonded to their parents. DCFS concluded that this particular incident did not meet the criteria for general neglect. Similarly, mother contends, the juvenile court had no evidence of harm or substantial risk of such harm to the children at the time of the July 12, 2017 jurisdiction hearing.

We disagree. We first note that mother had a history of stating she wanted to hurt herself, dating back to her time as a teenager. Mother’s first child was born in June 2015, when mother was just 20. Her second child was born just one year later in June 2016. Mother tried to kill herself just six weeks after that. Mother’s suicide attempt was no mere gesture. She was in a coma for a week and nearly died. Mother was then diagnosed with major depression with a history of suicidal ideation. Father suspected postpartum depression might have

led to mother's suicide attempt. Although paternal grandmother was unsure whether postpartum depression had led to the attempt, after mother had given birth, mother told her she was tired of living. Mother later said that she felt killing herself in August 2016 would be best for everyone, including her children. As noted by DCFS, these statements demonstrate that mother's mental health condition not only spawned damaging thoughts, statements, and self-harming actions, but also a misguided perception of what might be best for the children. Nor was mother's August 2016 suicide attempt an isolated occurrence. She reported five prior suicidal gestures.

Mother's conduct after her August 2016 suicide attempt bolstered the juvenile court's disposition. Mother stopped going to counseling once DCFS closed its investigation. By December 2016, mother had again made threats to kill herself. Mother admitted to the social worker that she had threatened to kill herself, but later denied it when before the juvenile court. The juvenile court found the DCFS report which addressed the incident to be more credible. Furthermore, although mother complied with some parts of DCFS's voluntary family maintenance plan, she resisted taking prescribed medication to treat her mental health issues, self-medicating with marijuana instead. In other words, mother refused to take the prescribed medication despite the five suicidal gestures before her August 2016 suicide attempt, her nearly successful August 2016 suicide attempt, and her admission of more recent suicidal ideation.

By the time the jurisdictional hearing took place in July 2017, mother was in therapy and no longer refusing medication. However, mother did not agree to take her prescribed medication, and stop self-medicating with marijuana until the May 2017



detention hearing. Even then, mother only began taking the medication in June 2017. Therefore, the juvenile court was right to conclude at the jurisdictional hearing that mother's recovery was still in the early stages. We also note that at this point, the children were only one and two years old and thus still in need of constant care and supervision

In determining whether a child is at substantial risk of serious future injury, courts look at the totality of the circumstances. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 817, abrogated on another ground in *In re R.T.* (2017) 3 Cal.5th 622, 628–630.) Given the totality of the circumstances presented to the juvenile court in July 2017, we conclude that substantial evidence supported the court's findings. Mother was not yet able to adequately care for the children, which put them at risk of serious physical harm.

Nevertheless, as with any person in her position, mother's recovery is a work in progress. According to the record on appeal, mother was set to have a progress hearing on October 17, 2017. It is unknown if mother continued to attend therapeutic services and continued to take her prescribed medication from July 2017 to October 2017. If so, the juvenile court would have had before it several months' worth of information and may have revised its original disposition. Indeed, by the date of this opinion, the juvenile court will have had a full year of compliance and progress at its disposal. Although this factor does not change our decision to affirm the juvenile court's original disposition, we do note that the landscape could conceivably have changed greatly since July 2017 and that circumstances might now inure to mother's—and ultimately the children's—benefit.

The juvenile court's removal order is governed by section 361, subdivision (a)(1), which provides that, when a minor is adjudged a dependent of the court, the court "may limit the control to be exercised over the dependent child by any parent or guardian." However, a child may not be removed from the physical custody of his or her parents unless there is "clear and convincing evidence" of one of the circumstances specifically enumerated in the statute. (§ 361, subd. (c).) One such circumstance is that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody." (§ 361, subd. (c)(1).) On July 17, 2017, the juvenile court made this finding.

As the juvenile court noted, section 361, subdivision (c)(1), identifies two alternatives for the juvenile court to consider as a reasonable means to protect the minor. One alternative is to remove an offending parent or guardian from the home. (§ 361, subd. (c)(1)(A).) The other alternative is to allow a nonoffending parent or guardian to retain physical custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm. (§ 361, subd. (c)(1)(B).) However, ordering the removal of a parent from the home may not be sufficient to protect the child. (*In re Michael S.* (2016) 3 Cal.App.5th 977, 984.) In such a case, the juvenile court may order both removal of the parent from the home and removal of the child from the

parent. (*Ibid.*) The juvenile court determined that this was such a case.

Mother contends that the juvenile court failed to consider alternatives such as unannounced home visits or medication monitoring. However, “[u]nannounced visits can only assess the situation . . . at the time of the visit.” (*In re A.F.* (2016) 3 Cal.App.5th 283, 293.) Furthermore, given mother’s resistance to taking her prescribed medications, after-the-fact monitoring could not ensure that mother continued to take her medication. Mother also contends that she had the support of father and the paternal grandparents. However, in July 2017, DCFS determined there was friction between paternal grandmother and mother, thus casting doubt on mother’s claim.

Based on the evidence discussed in detail above, we conclude that the juvenile court’s order was supported by substantial evidence. In July 2017, mother was only in the early stages of her recovery and thus there were no reasonable means by which the children’s physical health could be protected without removing them from her physical custody. However, we once again note that the landscape may have changed greatly since July 2017 and that the circumstances presented to the court today may now inure differently to mother’s and the children’s, benefit.<sup>4</sup>

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<sup>4</sup> Mother also argues that the juvenile court erred in failing to order informal supervision. However, neither mother nor her counsel asked the juvenile court to order informal supervision under section 360, subdivision (b). Thus, the claim has been forfeited on appeal. (See *In re Riva M.* (1991) 235 Cal.App.3d 403, 411–412.)

**DISPOSITION**

The order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

CHANEY, Acting P. J.

BENDIX, J.