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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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

B283871  
(Los Angeles County  
Super. Ct. No. CK31139)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

LORRAINE F.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Kim Nguyen, Judge. Affirmed.

Amy Z. Tobin, by appointment of the Court of Appeal, for Defendant and Appellant.

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

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Lorraine F. (mother) appeals from orders declaring her two youngest daughters Sienna and Sophie dependent children under Welfare and Institutions Code section 300, subdivision (b),<sup>1</sup> and removing them from parental custody under section 361, subdivision (c)(1). Mother contends the orders are not supported by substantial evidence. We affirm both orders.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Mother has nine children, ranging in age from 14 to 36. While the current case involves only the two youngest children, seven older siblings were all previously placed under the jurisdiction of the dependency court beginning in 1998, based on mother's drug abuse.

### ***1998 dependency case***

After mother's seventh child suffered withdrawal symptoms at birth and mother tested positive for methamphetamine, a court sustained petition allegations,

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

concluding each of mother's seven minor children were at risk of serious harm. By May 2000, mother had not completed a parenting program, had not enrolled in drug counseling, and was not appearing for drug tests. Between 2000 and 2004,<sup>2</sup> the court terminated jurisdiction over each of the seven children, establishing various legal guardianships or terminating jurisdiction as the children reached majority. In 2005 and 2006, the court terminated the remaining guardianships and ordered all but the two oldest children placed with mother. Mother received family maintenance services, and the court eventually terminated jurisdiction as to all seven children.

### ***Current 2017 dependency case***

In January 2017, the Los Angeles Department of Children and Family Services (Department) received a call alleging mother was neglecting and physically abusing Sienna (age 15) and Sophie (age 13). The anonymous caller stated mother has a history of using crystal methamphetamine. The caller saw mother recently and she appears to be back on drugs. According to the caller, mother was residing with maternal grandmother Rachel F., who enables mother because her own husband died of a drug overdose. The caller reported that Sophie is autistic, Sienna

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<sup>2</sup> There is no evidence in the record that dependency jurisdiction was extended to Sienna or Sophie when they were born in 2002 and 2004 respectively.

is depressed, and mother is aware that Sienna is cutting herself. Sienna is teased at school because she looks anorexic. Sienna had reported to a sibling that there is no food in the home and the girls could not eat at school because mother owed money to the cafeteria.

The police investigated for possible child abuse, interviewing mother and both girls. They found sufficient food in the home and no evidence supporting a claim of abuse. During mother's interview, "[s]he stated that she used to use drugs when she was a younger mother and was arrested for using in 2012 but has not used any drug since because she's trying to be a better mother to her children." Mother reported her prior use of methamphetamine, acknowledging that it was the reason her older children had been detained from her.

A Department social worker made an unannounced visit and observed the home to be neat and clean with plenty of food. The social worker did not observe any drug paraphernalia or alcohol in the home or notice any safety hazards. Mother denied any drug use and was cooperative during the interview. She had successfully completed three and one-half years on probation for a 2012 drug possession conviction. Mother acknowledged the home belonged to Rachel. Mother, Sienna, and Sophie had been living with Rachel for the past three years. Mother reported Rachel has very strict rules and would not permit her to use physical discipline with the girls. Rachel also knows the symptoms when mother is under the influence of drugs and would not

tolerate mother being under the influence in the home.

Mother agreed to drug test for the Department.

Mother reported that neither Sienna nor Sophie have any behavioral issues at home. Sienna sometimes had “teenage attitude” but she would come home every night and follow the rules. Mother described Sienna as a happy girl with a lot of friends, and mother had not observed any signs of depression or cutting. According to mother, Sophie is autistic and receives services at school, but does not receive regional center services or any in-home services. Mother also informed the social worker that she was in the process of adopting her grandson, and she was working with another social worker. Mother had obtained housing and was waiting for appropriate furniture to move in.

Rachel and Sophie denied any concerns about drug use or physical, sexual, or emotional abuse. Rachel reported that mother had recently been spending time in her new apartment getting it ready for the family. Sophie denied any inappropriate discipline and said she has plenty of food to eat. She denied seeing her mother use drugs, describing drugs as “pills or something like that.”

Mother agreed to drug test for the Department, and her January 20, 2017 test came back positive for methamphetamine and amphetamines. On January 26, 2017, mother denied any recent drug use, but after the social worker disclosed the positive drug test, mother admitted doing “one line” while visiting a friend about a week earlier. Mother reported she could not handle the stress her son was

putting her through. Rachel was upset and disappointed, stating she had not observed any signs or symptoms of drug use, but acknowledged she had not been looking for them. Rachel acknowledged that after mother obtained her new apartment, she would sometimes stay overnight and leave the girls in Rachel's care.

The social worker expressed concerns about mother's decision to move into a new apartment with her daughters, and Rachel and mother agreed to a safety plan for Rachel to call the Department if mother and the girls moved out, and for the girls not to be left alone under mother's care.

Twice when the social worker tried to interview Sienna, mother could not locate her. The first time, she was reportedly at a friend's doing homework, but mother could not reach her by phone. The second time, mother initially confirmed to the social worker that Sienna was home, but the social worker found no one at home. When pressed, mother said she was not sure what was going on as Sienna had told her she was at home. When the social worker was finally able to interview Sienna more than a week after her initial home visit, Sienna showed no signs of abuse, and denied being depressed or going hungry. She claimed the referral allegations were false, and reported that her older brother does not get along with mother and is upset that mother has obtained housing and is moving out from Rachel's home. Sienna denied being aware that mother had ever experimented with drugs or had a history with drug use, and reported she did not notice any change with mother.

She also denied writing a letter stating mother had a problem with drugs.

Staff at Sienna's school expressed concern about Sienna, explaining that she was hanging out with the wrong crowd, had only completed five out of 30 credits, and had a 1.7 grade point average. In the previous four months, Sienna had 24 unexcused tardies, 14 days missed due to illness, 5 days truant, and a two-day suspension for fighting. The school had visited mother at home, but reported that communication with mother was very poor. Mother had not completed the paperwork needed for Sienna to participate in an anti-truancy program.

After the social worker's initial investigation, mother tried to enroll in a substance abuse program. She was initially unable to do so because her Medi-Cal enrollment was inactive, but later called to schedule an intake appointment, informing the program that her Medi-Cal was active. She missed the intake appointment and told the program it was too far, and that her social worker was aware of this already. In the interim, mother missed an on-demand drug test on February 7, 2017, claiming she could not urinate. The social worker arranged a make-up test the following day, but the testing location reported mother was a no show.

The social worker attempted to reach mother later in February. Mother claimed she was meeting with an attorney who would be in contact. The social worker did not hear from any attorney. The social worker made an

unannounced visit to the home on February 28, 2017, but mother was not home. Sienna did not want to talk to the social worker, and Rachel insisted that mother and the girls had moved out in December. This was contrary to the January safety plan under which mother and Rachel had agreed that Rachel would notify the Department when mother moved out. The news about mother's December move also contradicted information mother and Rachel had given the social worker in January, when mother was reportedly living with Rachel, preparing her new apartment, and waiting for appropriate furniture. The social worker interviewed Sophie at school the following day. Sophie did not give clear information about whether mother and the girls had moved out.

Sienna's January 2017 report card had five Fs and one D for her first semester of ninth grade. When questioned about her grades later, Sienna said that until the eighth grade, she was primarily an A or B student and she did not know why she was struggling to attend high school regularly. On February 28, 2017, Sienna was cited for daytime loitering.

The Department detained Sienna and Sophie from mother on March 8, 2017. A petition filed under section 300, subdivision (b), alleged mother had a 20-year history of substance abuse and is a current abuser of amphetamine and methamphetamine, with a positive toxicology report on January 20, 2017. The petition also alleged that mother's older children had received permanent placement services



due to mother's substance abuse, and mother had a criminal history with a conviction for possession of a controlled substance. It alleged that mother's substance abuse endangers the children's health and safety, placing them at risk of serious physical harm. Mother denied the petition allegations at a detention hearing held on March 13, 2017. Mother's appointed counsel asked that Rachel be evaluated for placement, because the girls were currently placed with a non-related extended family member who was not able to get them to their current school. Mother's counsel also advised the court that mother had been in the process of obtaining private counsel who had told her not to do anything until he could make an appearance, but that appointed counsel had advised mother to immediately enroll in services and would be assisting mother with doing so that week. The court ordered monitored visits for mother, gave the Department discretion to place the girls with Rachel if appropriate, and specified that monitored visits were to take place out of Rachel's home if the girls were placed there. The Department was ordered to provide referrals for programs and services, including random and on-demand drug testing.

The Department's jurisdiction and disposition report was prepared in early April 2017. In that report, the Department stated that "mother is currently not enrolled in a drug program, she has missed approximately two separate intake appointments, but she has stressed that it is her intention to participate in treatment." The report does not

contain any information about random, on-demand drug tests after mother's missed test on February 7, 2017.

In an interview in March 2017, mother claimed she had not engaged in any drug use since 1997 until she relapsed in 2017. She said her adult son was making false allegations of abuse, and around the same time she got upset with a friend, which caused her to feel overwhelmed, frustrated, and stressed. Mother claimed that she ingested 1 or 1.5 lines of methamphetamine to cope, and she immediately knew she had made a mistake. According to mother, she did not have contact with her children for a few hours after she had used, and no one knew about her relapse. She was aware she had made a mistake using drugs to cope with her problems and preferred to enter a residential facility for treatment. She continued to stress she had been clean since 1997. Mother expressed concern that Sienna may have experimented with marijuana.

At the adjudication hearing, mother testified that she was not currently enrolled in a drug program, and she had not done drug testing after her initial positive test on the advice of her private counsel. In addition, the social worker had not given her the drug testing "paper" until the week before the hearing, and her name had not yet been called.

The court sustained the jurisdictional allegations and ordered the children to remain removed from mother's custody.

## DISCUSSION

### *Standard of review*

“We review the juvenile court’s jurisdiction findings and disposition order for substantial evidence. [Citations.] Under this standard ‘[w]e review the record to determine whether there is any substantial evidence to support the juvenile court’s conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court’s orders, if possible.’ [Citations.]” (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1384.) We look “to see if substantial evidence, whether contradicted or uncontradicted, supports the findings.” (*In re Alexander C.* (2017) 18 Cal.App.5th 438, 446 (*Alexzander C.*)). “Appellant has the burden to show that the evidence was not sufficient to support the findings and orders. [Citation.] The reviewing court may not reweigh the evidence or express an independent judgment. [Citation.]” (*Ibid.*)

### ***Substantial evidence supports the court’s jurisdictional finding under section 300, subdivision (b)***

Mother contends there was insufficient evidence to support a finding that she was a substance abuser or that her daughters are at substantial risk of suffering serious physical harm or illness. She argues that there was no evidence of substance abuse sufficient to meet the standard

described in *In re Drake M.* (2012) 211 Cal.App.4th 754 (*Drake M.*) or *In re Christopher R.* (2014) 225 Cal.App.4th 1210 (*Christopher R.*). She further argues that even if there is adequate evidence of substance abuse, the Department failed to meet its burden of showing that Sienna and Sophie were at substantial risk of serious harm. Her contentions lack merit.

Under section 300, subdivision (b)(1), a child may be found a dependent of the juvenile court when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse.” Section 300, subdivision (b)(1) “authorizes dependency jurisdiction without a finding that a parent is at fault or blameworthy for her failure or inability to supervise or protect her child.” (*In re R.T.* (2017) 3 Cal.5th 622, 627–633, 636–637, fn. 6 [disapproving *In re Precious D.* (2010) 189 Cal.App.4th 1251, and rejecting the reasoning requiring parental neglect for jurisdiction as set forth in *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820 (*Rocco M.*)].) “A section 300, subdivision (b) jurisdictional finding may not be based on a single episode of endangering conduct in the absence of evidence that such conduct is likely to reoccur. [Citation.]” (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 993.) To sustain

an allegation based on risk of future harm to the child, that risk must be shown to exist at the time the court makes the jurisdictional finding, but the court need not wait until the child is seriously injured to assume jurisdiction. (*Ibid.*)

“In [the] current case, the focus is on whether there is maternal substance abuse, and whether such substance abuse has caused harm or poses a substantial risk of causing harm to her child.” (*In re Rebecca C.* (2014) 228 Cal.App.4th 720, 725 (*Rebecca C.*).)

### Substance abuse

There is authority holding that drug use alone is insufficient to support jurisdiction under subdivision (b) of section 300. (See *Drake M.*, *supra*, 211 Cal.App.4th at pp. 768–769.) However, jurisdiction is proper when a parent has a history of substance abuse and the evidence supports an inference that the parent’s substance abuse places a child at risk based on the parent’s inability to provide regular care. (*Christopher R.*, *supra*, 225 Cal.App.4th at p. 1210 [distinguishing *Drake M.* and affirming jurisdiction over parents with a history of drug abuse, where children were under six years old and court disbelieved parents’ statements they were no longer using drugs].) “The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child. Successful participation in a treatment program

for substance abuse may be considered in evaluating the home environment.” (§ 300.2.)

We join the *Christopher R.* court in choosing not to follow *Drake M.* to the extent *Drake M.* held that a finding of substance abuse must be based on a medical professional’s diagnosis or evidence that meets the definition of substance abuse found in the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (4th rev. ed. 2000) (DSM–IV–TR). (*Christopher R.*, *supra*, 225 Cal.App.4th at pp. 1217–1218, referring to *Drake M.*, *supra*, 211 Cal.App.4th at p. 766.) As explained in *Christopher R.*, the *Drake M.* definition “is not a comprehensive, exclusive definition mandated by either the Legislature or the Supreme Court, and we are unwilling to accept [mother’s] argument that only someone who has been diagnosed by a medical professional or who falls within one of the specific DSM–IV–TR categories can be found to be a current substance abuser.” (*Christopher R.*, *supra*, at p. 1218.)

Mother claims the evidence of her substance abuse problems is not recent enough, and the only recent evidence in support of a finding that she is a substance abuser is her one positive drug test. The full picture is more complicated. Mother testified she did not use methamphetamine after 1997, until her one-time relapse in 2017. But the trial court found mother’s testimony not credible, and there is substantial evidence to support the court’s conclusion that mother was still struggling with substance abuse while lying about her drug problem and trying to avoid detection. If

supported by substantial evidence, the judgment or finding must be upheld, even though substantial evidence may also exist that would support a contrary judgment and the dependency court might have reached a different conclusion had it determined the facts and weighed credibility differently. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228 (*Dakota H.*)) First, mother's 2012 conviction for drug possession, considered together with her statements to police as reflected in the January 2017 police report, support the inference that she was using drugs in 2012 despite her protestations to the contrary. Second, mother denied any drug use when she initially met with the social worker in January 2017, and persisted with the denial until she was confronted with a positive drug test. Only then did she admit to doing 1 or 1.5 lines of methamphetamine. Third, mother subsequently avoided drug testing, initially claiming she could not drug test because of difficulty urinating, and when the social worker rescheduled the test for the following day, mother did not appear and fell out of contact with the social worker. In light of her assertion that the earlier positive drug test was the result of an isolated incident of drug use, it was reasonable for the court to infer that mother missed the tests to avoid a positive result. (*In re Noah G.* (2016) 247 Cal.App.4th 1292, 1303–1305 [a court “could reasonably conclude that common sense suggests a parent who consistently fails to appear for drug tests does so because of a consciousness of guilt”].)

Mother violated a safety plan by moving to a different apartment without notifying the Department. Later, mother continued to evade the social worker by claiming she was engaging private counsel who had advised her not to do anything until he made an appearance. Mother also claimed the attorney would contact the social worker, but the social worker never received a call from any private attorney. Given that the purported private counsel never made contact or appeared in court, and mother failed to enroll in a drug treatment program before the adjudication hearing, despite repeatedly professing her intention to enroll, the court could reasonably infer that she had relapsed. Mother's inability to cope with life's stressors without turning to drug use, in light of her history of substance abuse and in the face of negative consequences, supports the court's finding that she is a current substance abuser.

#### Substantial risk of serious physical harm

We also disagree with mother's contention that the Department failed to establish a nexus between her substance abuse and the risk of Sienna or Sophie suffering serious physical harm. The fact that Sophie and Sienna were 13 and 15 years old at the time of the Department's investigation does not preclude a finding of risk. The specifics of each child's circumstances and the nature of a parent's substance abuse problem are relevant to the court's findings.



In one case, a court found that a mother placed her 11-year-old child at risk “[b]y placing drugs under his nose, setting the wrong example, and leaving him entirely to his own devices over prolonged periods of time . . . .” (*Rocco M.*, *supra*, 1 Cal.App.4th at pp. 825–826.) In a different case, a father denied he needed help to resolve a 25-year history of methamphetamine use. Although the 11- and 14-year-old children were purportedly unaware of father’s drug use, the court reasoned that his insistence that he was not abusing methamphetamine and was only using it for back pain “could send a message to the children that daily use of methamphetamine is an appropriate means of coping with life’s difficulties.” (*Alexzander C.*, *supra*, 18 Cal.App.5th at p. 449.)

Mother argues that the court’s finding was unwarranted because, as in *Rebecca C.*, *supra*, 228 Cal.App.4th at pp. 727–728, mother’s home was stocked with food and free of any hazards, drugs, or firearms. We find the facts distinguishable here. In *Rebecca C.*, the mother had been engaged in her 13-year old daughter’s educational planning, regularly attending the daughter’s individual education plan meetings. She also committed herself to a drug treatment program soon after testing positive for drugs. (*Id.* at p. 722–723.) Here, mother described Sienna as a happy teenager with a few attitude problems, when in fact, she was ignoring the school’s efforts to address the increasing seriousness of Sienna’s truancy problems. Sienna reported that mother has moved the family multiple times in

the past four or five years, and she has attended approximately six different schools due to the frequent moves. She also went from being a student with As and Bs in the eighth grade to failing nearly all her classes in ninth grade. The school discussed Sienna's attendance issues with mother, but mother did not complete the paperwork needed to enroll Sienna in an anti-truancy program. Mother failed to act when the school suspended Sienna with the condition that she would be allowed to come back to school once mother met with school officials. Sienna is at risk of serious physical harm because the trajectory from "typical teenage attitude" to truancy and loitering to more serious criminal behavior can be a short and straight path without proactive parent intervention.

There is also evidence in the record to support the court's finding that Sophie is at risk of harm. As a minor with significant autism, she receives special services at school, and she does not seem to have a meaningful understanding of drugs and alcohol. At least until mother obtains treatment for her substance abuse, it is reasonable to infer that Sophie would be at risk remaining in the same household as mother.

Mother's inability to acknowledge the support her children need, combined with her willingness to turn to methamphetamine use and then lie about it, has led to a situation where there are valid safety concerns for Sienna and Sophie.

### ***Substantial evidence supports the removal order***

We review a dispositional order removing a child from a custodial parent for substantial evidence. (*In re John M.* (2012) 212 Cal.App.4th 1117, 1126.) In determining whether an order is supported by substantial evidence, “we look to see if substantial evidence, contradicted or uncontradicted, supports [it]. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations.’ [Citations.]” (*In re R.T., supra*, 3 Cal.5th at p. 633.) Issues of fact and the credibility of witnesses are questions for the trial court. (*In re Carmaleta B.* (1978) 21 Cal.3d 482, 495.) “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.” (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.) Thus, the pertinent inquiry is whether substantial evidence supports the court’s finding, not whether a contrary finding might have been made. (*Dakota H., supra*, 132 Cal.App.4th at p. 228.)

“The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus . . . is on averting harm to the child. [Citation.]’ [Citation.]” (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 969.) “The court may consider a parent’s past conduct as well as present circumstances.” (*In re N.M.*

(2011) 197 Cal.App.4th 159, 170.) “[C]ourts have recognized that less drastic alternatives to removal may be available in a given case including returning a minor to parental custody under stringent conditions of supervision by the agency such as unannounced visits.” (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 148.)

The same evidence discussed above, supporting the jurisdictional finding of mother’s substance abuse and the risk of harm, constitutes substantial evidence supporting the court’s decision to remove Sienna and Sophie from parental custody under section 361, subdivision (c)(1).

## **DISPOSITION**

The court’s jurisdictional findings and removal orders are affirmed.

KRIEGLER, Acting P.J.

We concur:

BAKER, J.

KIM, J.\*

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