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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re P.M., a Person Coming  
Under the Juvenile Court Law.

B277733

(Los Angeles County  
Super. Ct. No. DK17303)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.R.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Sherri S. Sobel, Temporary Judge (pursuant to Cal. Const., art. VI, §21). Affirmed.

Karen B. Stalter, 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, Deputy County Counsel, for Plaintiff and Respondent.

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## **INTRODUCTION**

Maria R. (mother) appeals from the court's assertion of dependency jurisdiction over her two children pursuant to Welfare and Institutions Code<sup>1</sup> section 300, subdivisions (a) and (b). Mother contends that the court erred in finding her conduct created a substantial risk of harm to her children; she argues the risk was created entirely by her husband, Juan M. (father), the perpetrator of severe domestic violence against her. We disagree and affirm.

## **FACTS AND PROCEDURAL BACKGROUND**

### *A. Initial Detention and Section 300 Petition*

The family consists of mother, father, and their two children, P.M. (born 2006) and N.M. (born 2011).<sup>2</sup> Mother and father married in approximately 2006. They were separated by June 2014, when mother moved with the children from Mexico to the United States. In early 2016, father came to the United States; he was not living with mother and the children, but he visited regularly. Early in the morning on May 4, 2016, father attacked mother in the presence of both children. He choked her and stabbed her multiple times with a knife. Father then fled. Mother was hospitalized in critical condition as a result of the attack; the children were taken into custody by the police and

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<sup>1</sup>All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

<sup>2</sup> Father is not a party to this appeal.

turned over to the Los Angeles County Department of Children and Family Services (DCFS).

Later that day, a social worker interviewed the children. P.M., then 10 years old, reported that mother and father had a verbal argument, then “father began to grab mother by the throat and began choking her.” P.M. ran to a neighbor’s house to get help. Father followed and demanded that P.M. come with him. P.M. was scared so he agreed. Father took P.M. to the paternal grandparents’ house and then left. P.M. claimed it was the first time he had seen father harm mother and that the fights began when father found out mother was cheating on him. He denied any physical abuse against him and asked to see mother.

N.M., then four years old, also told the social worker she had seen father choking mother. She stated she was scared of father and did not go when he asked her to come with him. She denied any physical abuse against her.

A social worker also interviewed mother in the hospital. Mother had sustained multiple injuries to her throat, arms, fingers, and shoulders from the attack. She stated that father was gone for a month to Mexico, recently returned, came to the house and accused her of cheating. She reported that they argued and then father grabbed a knife and stabbed her multiple times. Mother stated she was “fighting for her life” during the attack. She also said father had previously abused her “many times,” including threatening her with a gun and threatening to kill her. Mother stated she was afraid of father. She was currently pregnant with father’s child. Mother said she loved her children, wanted to get them back, and was willing to comply with DCFS recommendations.

The social worker also interviewed mother's neighbor, Erlinda O., who stated that mother and the children had been living in their current residence for nine months. Erlinda reported that father did not live in the home but came to visit. This was the first time she witnessed a domestic violence incident between mother and father.

According to the incident report completed by the responding police officers, Erlinda's daughter, Linda V., stated she heard mother screaming for help and saw father on top of mother, with both hands around mother's neck and mother's face turning blue. Linda tried to pull father off of mother, but could not. She grabbed the children, took them to Erlinda's apartment, then ran to her own apartment to call 911. She then saw father taking P.M. out of the apartment complex "by covering his mouth and dragging him along." The police found P.M. at his paternal grandmother's home and took him into custody.

On May 9, 2016, DCFS filed a petition under section 300, subdivisions (a) and (b). In count a-1, the petition alleged that mother and father "have a history of engaging in violent altercations," including the recent stabbing incident and prior occasions on which "father brandished a gun at the mother and threatened to kill mother," and other prior abuse. As to mother, the petition alleged that she failed to protect the children by "allowing the father to have unlimited access to the children. Such violent conduct on the part of the father against the mother and the mother's failure to protect the children" endangered the children's health and safety and placed them at risk of serious harm. Count b-1 contained the same allegations pursuant to section 300, subdivision (b).

In the detention report filed May 9, 2016, DCFS reported that father's whereabouts were unknown. At the detention hearing held the same day, the court found a prima facie case for detaining the children pursuant to section 300, subdivisions (a) and (b). The court noted it was detaining the children from mother due to her continued hospitalization. The court ordered DCFS to present evidence of due diligence in attempting to locate father.

B. *Adjudication*

Mother entered a 30-day domestic violence shelter on May 10, 2016. According to a letter sent by the program director on May 19, mother was attending and participating in weekly groups, including domestic violence education and parenting, and was going to weekly individual counseling sessions.

At a hearing on May 20, 2016, the court ordered the children released to mother, who continued to live in her domestic violence shelter. The court also ordered father to have no contact with the children.

DCFS filed the jurisdiction/disposition report on June 13, 2016. The report detailed interviews with mother and the children conducted on May 20, 2016. N.M. stated: "I saw my dad choke my mom. She was on the floor. I was hitting my dad with a candy stick to get off my mom and my brother was hitting my dad with the broom." She also told the social worker that she "only love[d] [father] a little bit," and "[h]e is mean and I am scared of him. He hurt my mom." She stated mom did not hit them and was "nice." P.M. stated that his parents were not living together after they moved to the United States, and father "just started visiting us a few months ago." On the day of the incident, mother and father started arguing, mother fell to the floor and

father started choking her. P.M. ran to get help and when he returned, he saw father “grabbing a knife from the kitchen and [he] started poking my mom on the neck. I don’t know how many times my dad poke [*sic*] her but there was blood all over the place. I grabbed the broomstick and started hitting my dad hard on the head so he could stop hurting my mom but he would not stop.” P.M. also reported that it was “not the first time my dad has hit my mom,” that he did so “several times in Mexico . . . with an open hand on the shoulders, back and face. I saw it happen at least three times in Mexico.” He denied that mother or father had ever hit him.

Mother reported that father came to their home and “started yelling at me because I told him I didn’t want to be with him.” Father “started choking me until I turned purple and I passed out. When I woke up he was already stabbing me. . . .” She was eight weeks pregnant but suffered a miscarriage from the attack. According to mother, she moved with the children to the United States in June 2014 after separating from father. Father arrived on March 31, 2016, and they “managed to arrange that he visits with the children on the weekends.” Mother reported that when they lived together in Mexico, father “would hit me with an open hand all over my body. He would grab me from the neck, pull me by the hair, shake me and insult me all the time. He never left any marks or bruises on me because he was smarter than that. . . . There was one incident that he had a gun to my head.” Father held his gun to her head for “a long time” and told her “to cry for someone.” Mother never left father “because I was scared he was going to do something to me.” However, mother insisted that father “was a good father to the children” and never hurt them. She acknowledged that the

children were traumatized from witnessing the attack by father and did not want to be left alone. She told the social worker that N.M. was wetting the bed and P.M. was having attachment issues. She also stated she did not want anything to do with father, was attending domestic violence counseling, and would comply with all court orders.

In its report, DCFS noted that mother was cooperative and “wants the best for the children.” It also stated that the children “are safe to remain with their mother,” and that mother “is willing and able to protect the children from abuse or neglect.”

The adjudication hearing was continued several times as DCFS unsuccessfully attempted to locate father. At the adjudication hearing on August 12, 2016, the court granted mother’s request for a three-year restraining order against father. Counsel for mother argued that she should be dismissed from the petition, as there was insufficient evidence to establish a substantial risk of harm to the children from mother. Counsel acknowledged that mother exhibited “bad judgment” in allowing father to visit the children, but noted mother’s recent positive behavior, including her request for the restraining order and her participation in domestic violence and parenting classes and counseling. Counsel for the children agreed to mother’s dismissal.

The court disagreed, stating: “This is one of the worst cases of domestic violence I have ever seen. If you think that these children have not been exposed to domestic violence, you can think again. . . . Mother is directly responsible for this.” The court sustained both counts of the petition. The court ordered the children to remain with mother, noting that “I actually had to think strongly about whether or not to even allow that.” The

court also ordered various services and counseling for mother and the children.

Mother timely appealed.

## DISCUSSION

### A. *Justiciability*

Mother acknowledges that we are not required to reach the merits of her jurisdictional challenge, as the dependency court will maintain jurisdiction over N.M. and P.M. regardless of the outcome of this appeal based on the unchallenged findings regarding father. “[A] jurisdictional finding good against one parent is good against both” because dependency jurisdiction attaches to the child, not the parents. (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) However, she urges us to exercise our discretion to review the sustained allegations against her. We generally will reach the merits of a challenge to a jurisdictional finding where the finding “(1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) ‘could have other consequences for [the appellant], beyond jurisdiction’ [Citation].” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763 (*Drake M.*); see also *In re D.C.* (2011) 195 Cal.App.4th 1010, 1015; *In re Anthony G.* (2011) 194 Cal.App.4th 1060, 1064-1065.) Here, mother contends the erroneous finding that she failed to protect her children could affect her in future dependency proceedings. We conclude it is appropriate to exercise our discretion in favor of considering mother’s claims on the merits.

### B. *Jurisdiction*

We review the dependency court’s jurisdictional findings and order for substantial evidence. (*Los Angeles County Dept. of*



*Children & Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 966; *In re R.C.* (2012) 210 Cal.App.4th 930, 940.) 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.” (*In re David M.* (2005) 134 Cal.App.4th 822, 828.) If a dependency petition enumerates multiple statutory bases on which a child is alleged to fall within the court’s jurisdiction, we may affirm a finding that jurisdiction exists if any one of those statutory bases is supported by substantial evidence; in such a case, we need not consider whether other alleged jurisdictional grounds also enjoy substantial evidentiary support. (*Drake M., supra*, 211 Cal.App.4th at pp.762-763; *D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1127.)

Section 300, subdivision (a) permits the assertion of jurisdiction where “the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent.” Section 300, subdivision (b) applies where “the 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 . . . to adequately supervise or protect the child . . .” Where the child has not suffered actual harm, the evidence must establish “that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm. . . .” [Citation.]” (*In re A.G.* (2013) 220 Cal.App.4th 675, 683.)

“Although section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396;

*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824), the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. (*In re N.M.* (2011) 197 Cal.App.4th 159, 165.) The court may consider past events in deciding whether a child currently needs the court's protection. (*Ibid.*) A parent's "[p]ast conduct may be probative of current conditions" if there is reason to believe that the conduct will continue.' (*In re S.O.* (2002) 103 Cal.App.4th 453, 461; accord, *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216 [(*Christopher R.*)].) (*In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1383–1384.)

A number of courts have upheld jurisdictional findings under section 300, subdivision (b) where there was evidence that the children were exposed to domestic violence and evidence supporting an "ongoing concern" about the children's future exposure to domestic violence. (*In re E.B.* (2010) 184 Cal.App.4th 568, 576; see also *In re T.V.* (2013) 217 Cal.App.4th 126, 134–135; *In re R.C.* (2012) 210 Cal.App.4th 930, 942.) "[D]omestic violence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it." (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) Children can be "put in a position of physical danger from [spousal] violence" because, "for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg. . . ." (*Ibid.*; see also *In re Daisy H.* (2011) 192 Cal.App.4th 713, 717.) Moreover, "[b]oth common sense and expert opinion indicate spousal abuse is detrimental to children.' [Citations.]" (*In re E.B.*, *supra*, 184 Cal.App.4th at

p. 576.) Domestic violence impacts children even if they are not the ones being physically abused, “because they see and hear the violence and the screaming.” (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 192.)

Mother does not dispute the court’s finding that N.M. and P.M. were at a substantial risk of harm from father’s violent conduct. Instead, she contends the court erred in refusing to dismiss her from the petition, because she was the victim of father’s domestic violence and her own conduct does not support a finding that she failed to protect the children from a risk of serious harm. Focusing on her most recent conduct, she argues that she “took reasonable steps to protect herself and the minors from further violence by father.” She also points to the fact that her relationship with father had apparently been incident-free for the past two years, prior to the most recent attack.

We conclude substantial evidence supports the dependency court’s finding that mother’s conduct endangered the children. Although there were no incidents while mother was in the United States and father was outside the country, the evidence showed a lengthy history of domestic violence by father against mother prior to that time, including threats by father that he was going to kill her, his use of a gun, and multiple incidents of violence against mother in front of the children. Mother admitted she remained with father for about eight years out of fear, then separated from him and brought the children to the United States. Despite this history, when father arrived in the country, mother resumed a relationship with him to some extent, becoming pregnant by him and allowing him to regularly visit the children without any apparent restrictions. Moreover, even after his recent attack that left her with severe injuries, required

hospitalization, and traumatized the children, she continued to insist that father was a “good father” and would never hurt the children. While mother’s positive efforts in attending domestic violence and parenting classes and her expressed willingness to protect the children from father are commendable, her inability to acknowledge the harm to P.M. and N.M. from father’s violence against her supports the court’s conclusion that the children remained at a risk of serious harm. Indeed, not only were the children suffering effects of the trauma of witnessing the attack by their father against their mother, both described their own attempts to intervene during the incident, placing them in immediate physical danger. We also note that at the time of the hearing, father remained at large, thus further justifying the court’s finding that DCFS had met its burden to demonstrate mother remained unable to protect the children from the risk of harm.

On the basis of the evidence in the record, the juvenile court could reasonably conclude that the children remained at risk due to the mother’s history of remaining in an abusive relationship and the evidence that she did not appreciate the danger father posed to the children. (See *In re E.B.*, *supra*, 184 Cal.App.4th at p. 576; *In re S.O.*, *supra*, 103 Cal.App.4th at p. 461.)

**DISPOSITION**

The jurisdictional orders are affirmed.

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COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.