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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re ANNA H., et al., a Person
Coming Under the Juvenile
Court Law.

B288254
(Los Angeles County
Super. Ct. No. DK15349)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

GREGORY H.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Daniel Zeke Zeidler, Judge. The jurisdictional order is affirmed in part and reversed in part. The dispositional order is affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel and David Michael Miller, Deputy County Counsel for Plaintiff and Respondent.

Gregory H. (Father) appeals from jurisdictional and disposition orders of the juvenile court declaring his two minor children dependents of the court pursuant to Welfare and Institutions Code section 300, subdivisions (a), (b), and (j).¹ The juvenile court entered the orders after finding that (1) Father's substance abuse rendered him incapable of providing his children with regular care and supervision, placing the children at risk of serious physical harm; and (2) Father physically abused his daughter, causing her unreasonable pain and suffering, and placing both the daughter and her brother at risk of serious physical harm.

On appeal, Father argues that substantial evidence did not support the juvenile court's jurisdictional findings. We agree as to the juvenile court's jurisdictional findings based on physical abuse, but disagree as to that court's jurisdictional findings based on substance abuse. Because Father did not contest the reasonableness of the juvenile court's dispositional findings other than by challenging the jurisdictional findings, we affirm those findings.

¹ Undesignated statutory references are to the Welfare and Institutions Code.

PROCEDURAL HISTORY

The minor children at the heart of this appeal are Anna H., born in March 2002, and Nicholas H., born in November 2007. Their parents, Father and Michelle H. (Mother) separated in 2010 and have been divorced since 2014. Father and Mother share joint legal custody of the children. On June 5, 2017—when Anna was 15 and Nicholas was 9—the Department of Children and Family Services (DCFS) received a referral alleging that Anna had called Mother to complain that Father had “picked her up from school under the influence of alcohol.” The subsequent investigation resulted in additional allegations that Father had previously physically abused Anna.

A. The Dependency Petition

A dependency petition was filed on July 20, 2017. The petition alleged that the children came within the jurisdiction of the juvenile court pursuant to section 300, subdivisions (a), (b) and (j). A child comes within the court’s jurisdiction under subdivision (a) if “[t]he 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 or guardian.” (§ 300, subd. (a).) Subdivision (b) pertains if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness” due to, among other things, “the failure or inability of his or her parent or guardian to adequately supervise or protect the child” or “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.” (§ 300, subd. (b).) Subdivision (j) applies when a “child’s sibling has been abused or neglected . . . and there is a

substantial risk that the child will be abused or neglected.”
(§ 300, subd. (j).)

In connection with subdivisions (a), (b) and (j), the petition alleged that in May 2017 Father had physically abused Anna by pulling her hair, and on another occasion, Father struck Anna, leaving a mark on her arm. The petition alleged that this physical abuse caused unreasonable pain and suffering and endangered both Anna and Nicholas. As a second allegation under subdivision (b), the petition stated that Father “has a history of substance abuse and is a current abuser of opiates, alcohol and prescription medication, which renders the father incapable of providing the children with regular care and supervision.”

B. The Detention Hearing

A detention hearing was held on July 20, 2017. Based on the detention report, the juvenile court found a prima facie case of jurisdiction under section 300, subdivisions (a), (b), and (j).² It also found, pursuant to section 319, that “[s]ubstantial danger exists to the physical or emotional health” of the children and “there is no reasonable means to protect the minors without removal.” The detention report noted that, while initially

² Because Anna had refused to attend the hearing and her counsel had been unable to speak to her, the hearing was continued to July 21, 2017. Nevertheless, the juvenile court made detention findings on July 20, leaving open the possibility for counsel to re-argue the issues the next day. The minute order for July 21, 2017 reflects that Anna did appear in juvenile court and reaffirms the July 20, 2017 detention findings. The reporter’s transcript does not include a transcript for the July 21, 2017 hearing.

cooperative, Father had been difficult to contact, making it impossible to connect the family with necessary services. The detention findings were made only as to Father, and the children were released to Mother. Father was permitted monitored visitation.

C. The Jurisdiction/Disposition Hearing

A contested jurisdiction and disposition hearing was held on October 11, 2017. The juvenile court admitted into evidence the July 20, 2017 detention report, a jurisdiction/disposition report signed by DCFS social workers on August 11 and 14, 2017,³ an October 11, 2017 “Last Minute Information,” and an October 11, 2017 letter from Patrick Baughan on behalf of Father. The juvenile court also took judicial notice of previously sustained petitions, minute orders, and court-ordered disposition case plans. No witnesses testified.

In the jurisdiction/disposition report, DCSF observed that at the time of writing, “it is not clear if this is a custody battle that belongs in Family Court, or if father has relapsed and does place the children in a dangerous situation by his drinking and possible physical abuse while under the influence of alcohol.” DCFS still concluded that it could not recommend that Father have unmonitored visits with the children.

At the jurisdiction hearing, Father’s counsel argued for dismissal of the petition. DCFS counsel noted that the children had previously been detained from Father in 2016 due to alcohol abuse and, after that case was terminated, DCFS had received further reports of Father’s drinking while driving. DCFS counsel

³ The copy of the report submitted by appellant with his request for judicial notice appears to be missing page 21.

argued that it was more likely than not that Father had relapsed and requested that the petition be sustained, as did Mother's counsel and the children's counsel. The juvenile court found by a preponderance of the evidence that each of the allegations in the petition was true, both children were persons described by section 300, subdivisions (a) and (b), and Nicholas was a person described by section 300, subdivision (j). (§§ 300, subds. (a), (b), (j); § 355, subd. (a).)

At the disposition hearing, held immediately after the jurisdiction hearing, Father requested that any drug testing mandated for him be limited to 10 tests and that he be permitted to have unmonitored visits with the children after consecutive "clean" tests for a period of time. He did not otherwise object to DCFS's case plan.

The juvenile court declared the children dependents of the court and released them to Mother's custody, who was ordered to cooperate with DCFS. It found that Father "poses substantial risk of detriment to [the children's] physical health, safety, protection, or physical or emotional well-being." The juvenile court further ordered DCFS to provide Family Maintenance Services to the children and Mother, and Enhancement Services to Father. The children were ordered to participate in Alateen or Alatot and to have individual counseling.

Father was ordered to submit to random and on-demand tests for alcohol and drugs; if he failed any test, he was to complete a full drug and alcohol rehabilitation program with weekly random testing. The juvenile court additionally ordered Father to participate in individual counseling to address substance abuse and appropriate discipline techniques and other case issues. He was not to drive the children without a valid

driver's license. Father's visits with the children, at least one hour per week, were to be monitored by a DCFS-approved monitor; the juvenile court granted DCFS discretion to liberalize the visitation. The juvenile court's standing orders prohibited corporal punishment and visitation by anyone under the influence of alcohol or drugs.

THE EVIDENCE

A. Prior History

Father's criminal history includes two misdemeanor convictions for driving under the influence (DUI) in 1991 and 2014. In 2014, he was detained for spousal battery and released due to lack of evidence. He was also convicted of misdemeanors in 2015 and 2016, for disturbing the peace and driving with a suspended license.

The July 20, 2017 detention report lists four previous referrals to DCFS. In October 2014, DCFS received a report that Father had been driving the children while under the influence of alcohol, using his mother's car because it did not have a breathalyzer. According to Anna, Father had not been drinking for four or five months and the children expressed no concerns about substance abuse by Father. "Mother assumed father was drinking because he was talking to her slowly." DCFS concluded that the allegations of severe neglect and emotional abuse were inconclusive and unfounded, respectively.⁴

⁴ The referral is ambiguous in several respects. It names the "perpetrator" as Gregory H. but then refers to "Anna's and Nick's biological father" as "David." It also states that the reporter claimed "D.M.V. records show David had a D.U.I. on

In August 2015, DCFS received a report that Father had left Anna at the Aquarium of the Pacific when she refused to get into the car with him because she thought he had been drinking. Anna called her mother, who in turn called the police. During the subsequent investigation, Nicholas said he did not think his Father had been under the influence of alcohol at the aquarium and Anna admitted she had not seen her father drink.

Father did not make himself available for interviews, but during the course of the investigation, DCFS received another report, claiming domestic abuse between Father and a girlfriend, Shannon G. (Shannon) on December 27, 2015. According to the reporter, Shannon discussed the abuse during an intake session on December 28, 2015 and had bruises on her arms. The reporter claimed that the violence included pushing and grabbing by the neck, apparently by both parties, and that Shannon had “anger issues” and started fights with Father. The reporter additionally claimed that Anna and Nicholas witnessed the abuse and the home environment was not safe for the children.

During the investigation, both Shannon and Nicholas reported additional incidents of domestic abuse between Father and Shannon. Anna was reported to be “displaying behavioral issues” and becoming “more aggressive,” but DCFS was unable to determine whether her behavior resulted from witnessing domestic abuse. On January 28, 2016, the juvenile court ordered the children detained from Father, but allowed him monitored visitation. Shannon’s own children were also detained.

04/04/2012 and 6/08/2013”—which does not accord with the records reported for Father.

In a May 10, 2016 disposition order, Father was allowed unmonitored visitation. From May until the termination of the juvenile court's jurisdiction over Anna and Nicholas on November 8, 2016, Father complied with individual counseling, a domestic violence program, and Alcoholics Anonymous (AA) meetings. His weekly drug tests were negative and there were no reports of drinking or substance abuse. DCFS, however, declined to grant Father's repeated requests for more extensive visitation, out of concern for the children's emotional well-being. Mother reported that the children's visits with Father were "negatively reflected back upon return to the mother's home." Anna complained that she "would like to be left alone by her father," which DCFS characterized as "typical of the average teenager wanting more independence."

On November 24, 2016, shortly after the juvenile court terminated its jurisdiction over the children, DCFS received a report that Anna had texted her mother the previous day to say Father acted as if he was drunk and he was driving under the influence of alcohol. Anna texted Mother again on the 24th, stating that Father was driving under the influence on the way to the grandmother's house for Thanksgiving. Father drug tested "on demand" and was found negative for all substances. When interviewed, the children said they had not actually seen Father drinking and Father denied consuming alcohol since before the previous case with DCFS began. Father and the children reported that a paternal uncle had driven them home on Thanksgiving, which Father attributed to his own fatigue from work. The uncle denied seeing Father drink, but stated Father acted "weird" the night of November 24. DCFS concluded that

because no one had seen Father drinking, it did not have sufficient evidence of a relapse or danger to the children.

Several months later, on April 12, 2017, DCFS received a report that Father took the children camping during spring break and Anna had called Mother to complain that Father was drunk and acting “aggressive” with her, including pushing her. Anna also said that Father was drunk when he picked up the children from school and passed out from drinking while camping. The social worker concluded the referral arose from a custody dispute. Father’s drug test on demand was negative. He denied hitting Anna and said he only defended himself while she was trying to hit him. Nicholas “appeared happy, healthy, and comfortable in mother’s and father’s presence.” According to the summary of the referral, Mother had not seen any altercations between Father and Anna, but heard of them from Anna. DCFS deemed the allegations of general neglect and physical abuse “inconclusive” and concluded no intervention was needed.

B. Investigation of the June 2017 Incident

For the July 20, 2017 detention report, a social worker interviewed Mother, Father, Anna, Nicholas, and several other family members, as well as another social worker previously assigned to the family.

The social worker first spoke with Mother by telephone on June 8, 2017 and then interviewed her and other family members at the home on June 14, 2017. Mother stated that Anna had contacted her on June 5, 2017 about Father’s possible drinking and driving, prompting Mother to call the police. She explained that Anna suspected Father had been drinking because he was “unresponsive” and when he drinks “he gets really quiet.” Mother was concerned that because the police officer knew

Father from childhood, “he did not write a thorough report.” She stated that Father has a high tolerance for alcohol and, on one occasion when he was stopped while driving under the influence, he was three times over the legal limit. When the social worker asked why Anna had not called the police herself, as suggested by a previous social worker, Mother stated that Anna would not be aware of Father’s drinking until she got into the car. She claimed that Anna had once called the police in November 2015.

The police report for June 5, 2017 states that when the officer arrived at father’s house, the children “were cleaning dishes and playing video games and were fine.” Father was “irritated” that Mother had called law enforcement. He denied he drank alcohol, but the report notes that the officer “could smell odor of alcohol when close.” Father answered all questions and “did not slur or show any further signs of being drunk.” Father was informed that his license was suspended and he ran the risk of arrest if he drove. According to the police report, Father “was appreciative and understood we were looking out for his kids and their [welfare] as well as his.”

Mother also reported that “she thinks the father is emotionally and can be physically abusive.” “She stated that he is usually with his girlfriend but she has gotten into it with the father in the past.” Mother claimed that “he can yell, pull hair, and even drag people in the room.” The record does not include information about any specific episodes of such behavior. Mother also “stated that Anna has been having behavioral issues and has been aggressive with the maternal aunt.” Anna was seeing a therapist and wanted to go to a psychiatrist for medication, but Mother did not like the idea of medication. According to Mother, Father said Anna was suicidal.

Mother reported that Father had never hit Nicholas, but Anna is more “argumentative.” She also told the social worker that the children “have a lot of anxiety going over to the father’s home” and she wanted Father to have only monitored contact with the children.

When the social worker interviewed Anna, Anna was uncertain when the incident that prompted the referral had occurred. She confirmed that she had texted her mother and that the police arrived at her father’s house, but then stated she “did not care of [sic] her father drinking because she is not scared of him drinking.” Anna denied being worried or afraid about anything, but also said she was depressed, had nightmares, and sometimes forgot to eat.

When asked about “the physical abuse,” Anna “stated that nothing recently has happened, but before[,] he had pushed her or even pulled her hair,” possibly two months earlier. The social worker asked about an example, and Anna “stated that one time she was trying to show him her homework and he got mad at her for picking up the paper and she said ‘I don’t know what happened after.’” Questioned about what that meant, she responded: “I don’t know, I don’t know, I guess he hit my arm.” Asked what Father hit her with, Anna said: “ ‘I don’t know his fist.’ ” She stated she received a bruise from the episode.

It appears from the report that during the summer the children spend alternate weeks with their parents. Anna stated that she did not like the summer custody schedule and did “not want to be with either one of her parents for an entire week” and would rather be with her friends. When asked about suicidal ideation, Anna ended the interview and left.

Nicholas denied to the social worker that “anything bad” happened when his father picked them up from school and claimed that his father did not smell like alcohol. He stated that he had never witnessed his father hit his mother and denied “being scared of anyone in the home, substance abuse, sexual abuse, or suicidal ideation.” Neither Nicholas nor Anna had any visible marks or bruises.

The maternal grandmother reported that she had not seen anything “concerning” recently, but “Anna speaks about it a lot while Nicholas does not.” The record does not indicate whether these comments referred to episodes of drinking or abuse. The grandmother said that “the cops won’t do anything even if the minor Anna is screaming hysterically,” but the mother said that police have never been called about abuse.

The social worker first spoke to Father by telephone on June 12, 2017. Father said he was willing to have a drug test that day, informed the social worker that he had been prescribed hydrocodone for pain from a recent hernia surgery, and texted his medical report showing the prescription. Father’s June 12, 2017 lab report shows that he tested positive for hydrocodone and negative for all other substances, including alcohol.

When the social worker spoke with Father on June 14, 2017, he said that he had recently had hernia surgery, was “stressed” from losing his job, and was filing for bankruptcy. Father stated that June 5, 2017, the day of the alleged incident, was the last day of school for the children but otherwise uneventful. Once they got home, he found out that Anna had texted Mother and Mother had called the police, who arrived, “talked to everyone, and that was it.” Father stated that he picked up Anna a couple of days after the incident and they

did not discuss it. Later on, Anna refused to come out of her mother's house when Father arrived to pick her up, although Nicholas joined him. Father also stated that "he just lets it go now and doesn't find there to be a point to argue" with Anna.

Father claimed that he has been "three years clean" and attends meetings once a week. He has a "scrambler" that he wears when he is with his children, which can text the amount of alcohol he sweats out. He also has a breathalyzer that he breathes into before driving the children. He produced a temporary driver's license, showing that he had renewed it on June 7, 2017—two days after the alleged incident.

Father stated that Mother has a lot of "animosity" toward him, which he understands, but believes she needs to get over it for the children's sake. As an example, he noted an incident when he collected the children from school and took them to his house because Mother could not collect them. When the maternal grandmother arrived to pick up the children, Anna was working on homework and did not want to leave. Mother called, got angry, and threatened to call the police.

Father also reported that Anna did not like the summer custody schedule; he believed it was because she wanted to spend more time with her friends. He "decided to make adjustments and give her more space," and told her to bring her friends over, but she declined.

The social worker did not see any alcohol in Father's home. Father's sponsor, who said that he talks with Father every day by phone and that Father "is still working the programs," told the social worker he had no concerns about the children being in Father's care. The paternal uncle also stated he had no concerns about the children being with Father and that Nicholas reported

frequent trips with Father to the park and beach. The paternal uncle believed Father was maintaining his sobriety. The children's doctor also denied any safety concerns for the children. By contrast, the maternal uncle, who admitted that he did not have much contact with Father, stated that he had concerns about Father's drinking, which "can be dangerous at times."

The social worker also spoke with a colleague who had worked with the family following the April 2017 referral. The previous social worker claimed that Father "has a very structured schedule at home, which can be a problem" for Anna. She also stated that "the minors did not report any concerns," but Mother believes Father is still drinking and "is going to keep calling in referrals until she gets her way."

C. The Jurisdiction/Disposition Report

The jurisdiction/disposition report completed in August 2017 included additional interviews with family members.

With respect to Father's alleged drinking, Anna stated: "Yeah, he drinks. He will get drunk." She claimed that while she used to see bottles of vodka, "now he hides it." Nicholas denied seeing his father drinking, and Mother commented primarily about Father's drinking in the past. She claimed that Father "has gone through three substance abuse programs, and they haven't helped."

Father acknowledged his past drinking, but insisted: "Now I don't drink, I go to AA and I have a sponsor, the whole bit." One of Father's AA sponsors reported no "concerns or suggestions that [Father] is drinking." Another sponsor, who claimed to meet with Father at least once a week, wrote that Father was committed to "a sober life" and to his children. All five of

Father's random drug test results from July 31, 2017 through September 21, 2017 were negative for all substances.

As to the allegations of physical abuse, Anna stated: "Yes that happened. He got mad at me for no reason and he punched me and pulled my hair. This was not the first time and this kind of thing usually occurs when my dad has been drinking."

Nicholas confirmed the incident: "[Y]eah, I was there when that happened, I saw it. He (father) got mad at her, I forgot why. He pushed her, then she (Anna) got mad and she hit him (father). It was after she hit him that he pulled her hair. My dad doesn't hit me; I have a good time with my dad." Mother reiterated that Father had been physically abusive during their marriage and said that he was once arrested for domestic abuse with a girlfriend named Kim, but the incident was downgraded to disturbing the peace. Mother also referred to the incident with Shannon: "[T]hat was one of the times that our kids were also removed from his care."

Father again denied any physical abuse. He insisted that Anna "had been more and more aggravated, she was not doing well in school, she was not finishing up her summer school credits on line, she just was not doing well." "What really happened was I was willing to change our visitation schedule, she (Anna) was upset and she was the one that hit me." He claimed that, unlike Mother, he holds Anna accountable, had attended four meetings at her school, and "was always involved in her school work."

DISCUSSION

On appeal, Father asks this Court to reverse the juvenile court's jurisdictional findings and the dispositional orders based on those findings. Father does not otherwise challenge the content of the dispositional orders.

I. Legal Standards

We apply the substantial evidence test to Father's challenges to the juvenile court's findings. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.) Under this test, "[w]e do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. Rather, we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court's order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion." (*In re L. Y. I.* (2002) 101 Cal.App.4th 942, 947, citing *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) Substantial evidence does not mean *any* evidence, however. (*In re Savannah M.*, *supra*, at pp. 1393-1394.) Substantial evidence is evidence that is "reasonable, credible, and of solid value." (*Ibid.*, citing *In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.) Although substantial evidence may consist of inferences reasonably drawn from the evidence, such inferences may not result from mere speculation or conjecture. (*In re Savannah M.* at pp. 1393-1394, citing *Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.)

II. Substantial Evidence Supported the Juvenile Court's Jurisdictional Findings Based on Substance Abuse.

The dependency petition sought jurisdiction under section 300, subdivision (b), based on allegations of Father's substance abuse.⁵ As noted above, subdivision (b) authorizes jurisdiction if "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness," resulting from, among other things, "the failure or inability of his or her parent or guardian to adequately supervise or protect the child," or the inability of a parent or guardian "to provide regular care" due to substance abuse. (§ 300, subd. (b)(1).) Thus, there are three elements required for jurisdiction under subdivision (b): (1) a failure or inability of the parent to adequately supervise the child or the inability of the parent to provide regular care due to substance abuse; (2) causation; and (3) serious physical harm to the child, or a substantial risk of such harm. (See *In re Rebecca C.* (2014) 228 Cal.App.4th 720, 724-725.)

Here, the petition alleged: "The [father] has a history of substance abuse and is a current abuser of opiates, alcohol and prescription medication, which renders the father incapable of providing the children with regular care and supervision. On 6/12/17, the father had a positive toxicology screen for opiates and hydrocodone. The children are prior dependents of the Juvenile Court due to the father's substance abuse. The father's substance abuse endangers the children's physical health and safety, creates a detrimental home environment and places the children at risk of serious physical harm and damage."

⁵ Allegation b-1.

Section 300 does not define “substance abuse.” Division Three of this District has held that “a finding of substance abuse for purposes of section 300, subdivision (b), must be based on evidence sufficient to (1) show that the parent or guardian at issue had been diagnosed as having a current substance abuse problem by a medical professional or (2) establish that the parent or guardian at issue has a current substance abuse problem as defined in the [American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (4th rev. ed. 2000) (DSM-IV-TR)].” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 766; *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1346.) The full definition of substance abuse in the DSM-IV-TR relied upon by *In re Drake M.* is “[a] maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12-month period: [¶] (1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home (e.g., repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; neglect of children or household); [¶] (2) recurrent substance use in situations in which it is physically hazardous (e.g., driving an automobile or operating a machine when impaired by substance use); [¶] (3) recurrent substance-related legal problems (e.g., arrests for substance-related disorderly conduct); and [¶] (4) continued substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance (e.g., arguments with spouse about consequences of intoxication, physical fights).’” (*In re Drake M., supra*, 211 Cal.App.4th at p. 766, quoting DSM-IV-TR, p. 199.)

Divisions Seven and Eight in this District have questioned whether a medical diagnosis or the four DSM-IV factors are necessarily required for a finding of jurisdiction. (See *In re Rebecca C.*, *supra*, 228 Cal.App.4th at pp. 725-726; *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1218-1219 & fn. 6.) As the *Christopher R.* court pointed out, the Fifth Edition of the DSM defined “substance use disorders” more broadly and identified 11 relevant criteria. (*In re Christopher R.* at p. 1218, fn. 6.) These include cravings and urges to use the substance; expenditure of time in getting, using or recovering from use of the substance; sacrifice of social, occupational or recreational activities due to substance use; and failure to fulfill obligations at work, home or school due to substance use. (*Ibid.*; see also *In re Alexander C.* (2017) 18 Cal.App.5th 438, 447.)

The record here does not include substantial evidence of Father’s alleged abuse of opioids and prescription medication under any of these criteria. Still less does it contain evidence that any such abuse interfered with Father’s ability to supervise or provide care to the children and thereby caused serious physical harm or a substantial risk of such harm. Father tested positive for hydrocodone only once and he had a prescription for the drug to treat pain from a recent surgery. As the *Drake M.* court noted, “the mere usage of drugs by a parent is not a sufficient basis on which dependency jurisdiction can be found.” (*In re Drake M.*, *supra*, 211 Cal.App.4th at p. 764.) There is no evidence of recurring use. Nor is there evidence linking Father’s prescribed use of hydrocodone or any other prescription medication to endangering conduct.

The record, however, does contain substantial evidence of alcohol abuse. Father does not contest that his history is marked

by alcohol use in dangerous situations or that his use led to repeated legal difficulties. That history includes 1991 and 2014 convictions for driving under the influence. DCFS received referrals in October 2014 and August 2015 alleging that Father was driving his children while under the influence of alcohol, and the juvenile court sustained a dependency petition in May 2016 based on findings that alcohol abuse rendered Father incapable of providing regular care for the children and that he had been under the influence of alcohol while the children were in his care and supervision.

There is additional evidence of alcohol abuse after the previous dependency case was terminated in November 2014. DCFS received referrals in November and April 2017 alleging that Anna said Father was “behaving like he was drunk” while the children were in his care and “smelled of alcohol” and “appeared impaired” while on a camping trip with the children. Anna allegedly also reported on each of these occasions that Father drove the children while under the influence of alcohol. DCFS itself deemed these allegations inconclusive, partly because no one saw Father drinking. On the other hand, Anna’s allegations that Father was drunk while driving her home on June 5, 2017 were somewhat corroborated by the police officer’s observation that he could smell alcohol on Father. Anna herself told the social worker that her Father currently drinks and “will get drunk.” She claimed to be able to “tell when he has been drinking.” Moreover, Anna’s allegations are consistent with the pattern of abuse reported prior to November 2016.

Given (1) Father’s acknowledged and repeated abuse of alcohol in the past; (2) his teenage daughter’s repeated allegations that Father was drinking and driving under the

influence of alcohol; and (3) the profound seriousness of the alleged endangering conduct, we conclude that there is substantial evidence of substance abuse that renders Father unable to provide adequate care and supervision for his children and creates a substantial risk they will suffer serious physical harm.

We acknowledge that the record contains contrary evidence: Father's negative drug test in November 2016 and his six drug tests from June 12, 2017 to September 21, 2017; and the comments of Father's two AA sponsors. DCFS itself was unsure if Father had relapsed or the allegations stemmed from a custody battle. Under the substantial evidence test, however, we are compelled to make all inferences in favor of the juvenile court's findings.

In sum, substantial evidence supported the juvenile court's jurisdictional findings as to allegation b-1 under section 300, subdivision (b).

III. Substantial Evidence Did Not Support the Juvenile Court's Findings Based on Physical Abuse.

A. Because of the potential of future detriment to Father, we address the merits of the juvenile court's other jurisdictional findings.

The dependency petition additionally alleged that jurisdiction was warranted under section 300, subdivisions (a), (b), and (j), based on allegations of Father's physical abuse of Anna.⁶ When, as here, a dependency petition alleges that a

⁶ Counts a-1, b-2, and j-1.

child comes within the juvenile court's jurisdiction on multiple grounds, we affirm the juvenile court's finding of jurisdiction if any one of the alleged statutory bases for jurisdiction is supported by substantial evidence. (*In re D.P.* (2014) 225 Cal.App.4th 898, 902, citing *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

We may exercise our discretion and reach the merits of a challenge to any jurisdictional finding, however, when 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’ [citations].” (*In re Drake M.*, *supra*, 211 Cal.App.4th at pp. 762-763.)

As noted above, DCFS social workers repeatedly expressed concern that referrals regarding Anna and Nicholas may have stemmed from “a custody battle that belongs in Family Court.” One social worker went so far as to say that Mother did not want to go to family court because it would cost money and she would “keep calling in referrals until she [got] her way.” In light of these expressed concerns, we believe the additional allegations against Father could potentially impact future dependency proceedings or otherwise have detrimental consequences beyond the question of the juvenile court's jurisdiction. We therefore consider whether substantial evidence supports the allegations of physical abuse under section 300, subdivisions (a), (b) and (j).

B. There was no substantial evidence of past, or substantial risk of future, serious physical harm.

Section 300 subdivision (a) authorizes jurisdiction where “[t]he 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 or guardian.” (§ 300, subd. (a).) Subdivision (j) authorizes jurisdiction if a child’s sibling has been abused or neglected, as defined under subdivisions (a), (b), (d), (e), or (i),⁷ and “there is a substantial risk that the child will be abused or neglected” as defined in those and other subdivisions. (§ 300, subd. (j).)

The petition specifically alleged that “[i]n May of 2017, . . . [Father] physically abused the child Anna by pulling the child’s hair. On another occasion, the father struck the child and inflict[ed] a mark to the child’s arm. Such physical abuse was excessive and caused the child unreasonable pain and suffering. The physical abuse of the child by the father endangers the child’s physical health and safety and places the child and the child’s sibling, Nicholas, at risk of serious physical harm, damage, danger and physical abuse.”

⁷ Subdivision (d) applies to a child subjected to sexual abuse; subdivision (e) applies to a child under age five who has suffered “severe physical abuse”; and subdivision (i) applies when “[t]he child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.”

On appeal, DCFS does not contend that Anna suffered “serious physical harm.” Instead, DCFS argues that Father’s alleged conduct cannot be justified as an exercise of the parental right to discipline because it was not reasonable, age-appropriate, or warranted by the circumstances. (See *In re D.M.* (2015) 242 Cal.App.4th 634, 641 [Whether a parent’s conduct comes within or exceeds the parental right to discipline turns on three considerations: “(1) whether the parent’s conduct is genuinely disciplinary; (2) whether the punishment is ‘necess[ary]’ (that is, whether the discipline was ‘warranted by the circumstances’); and (3) ‘whether the amount of punishment was reasonable or excessive’ ”], quoting *People v. Whitehurst* (1992) 9 Cal.App.4th 1045, 1050.) We agree with DCFS that the alleged hair-pulling and punch were not appropriate discipline. That does not mean that the alleged conduct inflicted “serious physical harm,” however. Because the only injury alleged was a bruise to Anna’s arm, we conclude the record lacks substantial evidence that Anna suffered “serious physical harm.”

The remaining question is whether the record establishes a “substantial risk” of serious harm to either or both of the children in the future. (§ 300, subd. (a), (b), (j).) Subdivision (a) provides that “a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm.” (§ 300, subd. (a).)

As an initial matter, we note that the record does not support the petition’s allegations of a separate hair-pulling incident in *May* 2017, and is ambiguous as to whether there was

more than one incident of abuse as alleged in the petition. When the social worker interviewed Anna on June 14, 2017, Anna first noted that “maybe 2 months” earlier Father had “pushed her or even pulled her hair.” This would place the incident in April. When interviewed by telephone for the jurisdiction/disposition report on August 11, 2017, Anna referred to a *single* incident during which Father “punched [her] and pulled [her] hair.” It is not clear whether this incident is the same as that alleged in the April 2017 referral (in which Anna allegedly reported Father was being “aggressive” and pushed her). Despite these ambiguities, we construe the evidence favorably to the juvenile court’s ruling and view the record as including three possible incidents including pushing, a single punch, and hair pulling.

While evidence of harmful conduct in the past is relevant to the risk of future harm, such incidents, standing alone, do not establish the requisite risk under section 300. (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1025.) There must be some reason “beyond mere speculation” to believe the alleged conduct will reoccur. (*Ibid.*; see *In re James R.* (2009) 176 Cal.App.4th 129, 135-136.)

Viewing the record as a whole, we conclude there is not substantial evidence on which to base a conclusion that Father’s abusive conduct toward Anna will not only recur but *escalate* so as to cause serious physical harm to her or Nicholas. DCFS argues that “Father’s propensity for violence appears to be long-standing, and Anna stated he usually became physically aggressive towards her after he drank alcohol.” (Footnote omitted.) As additional evidence of a future risk of harm, DCFS stated that Father “had not enrolled in any programs to address his anger management issues or his substance abuse problem.”

Anna’s actual statement referred vaguely to “this kind of thing” and did not include any more specific references to other episodes. Mother’s references to physical abuse during her marriage were even more non-specific and do not necessarily indicate a risk of harm to Anna or Nicholas. Absent further information about the previous episodes, this information is not of “solid value” so as to amount to substantial evidence from which we might infer future abusive acts toward Anna and/or Nicholas that seriously harm them. (*In re Savannah M.*, *supra*, 131 Cal.App.4th at pp. 1393-1394.) The previous detention of the children did result, in part, from substantiated incidents of domestic violence involving Shannon. But there have been no reports that with Anna, Father has engaged in neck grabbing or the other conduct reported in connection with Shannon.⁸

Nor does the record contain substantial evidence supporting DCFS’s allegations seeking jurisdiction over Nicholas under section 300 subdivision (j). That subdivision predicates jurisdiction on the abuse or neglect of a sibling, as defined in subdivision (a), (b), (d), (e), or (i), *and* a substantial risk that the child will be abused or neglected, as defined in one or more of those subdivisions. (§ 300, subd. (j).)

The only allegations made by DCFS in support of a request that the juvenile court assume jurisdiction under subdivision (j) are those quoted above, alleging physical abuse of Anna. Because we have concluded that substantial evidence does not support a

⁸ The record also does not support DCFS’s contention that Father failed to take steps to remediate his behavior. Following the 2016 detention, for example, Father complied with individual counseling, a domestic violence program, AA meetings, and drug testing.

conclusion that Father's past actions resulted in serious physical harm to Anna or created a substantial risk of future harm, so as to make jurisdiction as to Anna proper under subdivisions (a) or (b) on account of the alleged physical abuse, the first requirement of subdivision (j) is not met.⁹

We therefore reverse the orders as to the jurisdictional findings that pertain to Father's physical abuse of Anna (counts a-1, b-2 and j-1).

⁹ As discussed *supra*, substantial evidence supports jurisdiction over Anna under subdivision (b) based on Father's substance abuse. The petition did not seek jurisdiction over Nicholas under subdivision (j) on that basis, however, and the juvenile court did not sustain the petition on that basis.

DISPOSITION

We affirm the portion of the juvenile court's order based on it finding that jurisdiction over Anna and Nicholas was proper under Welfare and Institutions Code section 300, subdivision (b), based on Father's alleged substance abuse and consequent inability to supervise and care for the children. We reverse the portion of the juvenile court's order based on it finding that jurisdiction was proper under Welfare and Institutions Code section 300, subdivisions (a), (b), and (j), based on allegations a-1, b-2 and j-1 about Father's physical abuse of Anna. Because the juvenile court had jurisdiction, and Father has not otherwise challenged the dispositional orders, we affirm the October 11, 2017 dispositional orders in their entirety.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.